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APPENDIX

FILED

FEB 26 1970

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1970

No. 49

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., et al.,
Plaintiffs-Appellants,

v.

LOWELL WADMOND, et al.,
Defendants-Appellees.

STEPHEN MARTIN WEXLER, et al.,
Plaintiffs-Appellants,

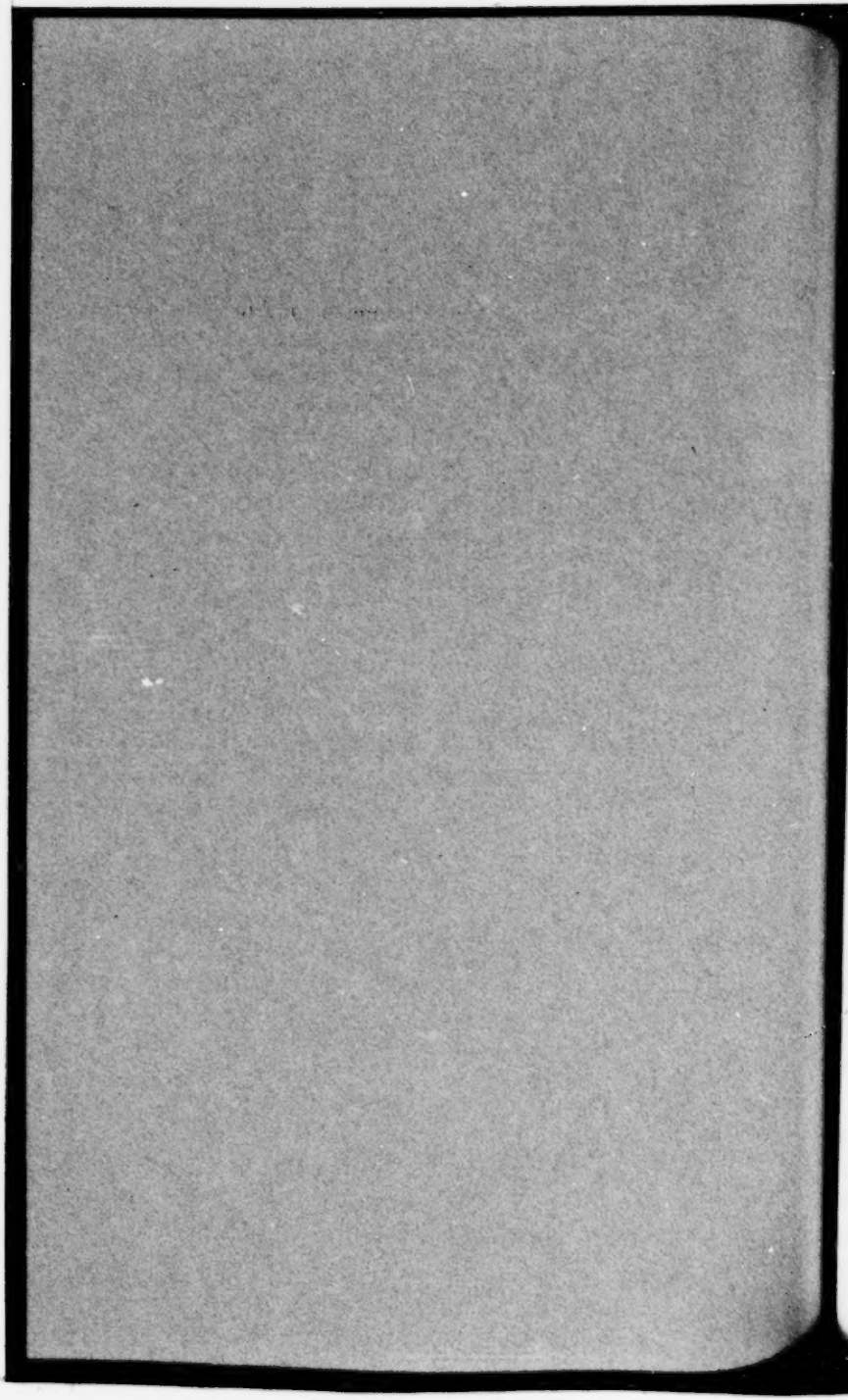
v.

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

Filed October 6, 1969

Probable Jurisdiction Noted January 12, 1970



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UNITED STATES DISTRICT COURT
For the Southern District of New York

68 Civ. 2917

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., TOBY B. GOLICK, JAMES C. MAURO, JR. and WILLIAM H.B. RODARMOR on behalf of themselves and all other persons similarly situated,

Plaintiffs,

—*v.*—

LOWELL WADMOND, FELIX A. MULDOON, EDWIN L. WEISL, MARK F. HUGHES, BRUCE BROMLEY, MONROE GOLDWATER, ARTHUR H. SCHWARTZ, BERNARD TRENCHER, THOMAS B. DYETT and ALFRED A. GIARDINO as Chairman and members of the Appellate Division First Department Committee on Character and Fitness of Applicants for Admission to the Bar, THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT,

Defendants.

Docket Entries

Date	Proceedings
July 16, 1968	– Filed complaint and issued summons.
July 18, 1968	– Mailed Notice of Motion re: 3 Judge Court. Ret. 7/30/68.
Aug. 23, 1968	– Filed Order to Show Cause re: Judgment, etc. Ret. 8/27/68, and affidavit in support thereof.
Aug. 26, 1968	– Filed affidavit in opposition to motion to convene a 3-judge court, etc.

Docket Entries

Date	Proceedings
Aug. 26, 1968 –	Filed Brief of Attorney General in opposition to motion to convene a 3-judge court, etc.
Aug. 26, 1968 –	Filed ANSWER of defendants.
Sept. 25, 1968 –	Filed OPINION #35221. Motley, J. ***The motions to convene three-judge courts are granted and the cases are referred herewith to the Chief Judge of the Circuit.––Plaintiff's motion in 68 Civ. 2917 to consolidate the two suits (68 Civ. 2938) is improperly presented at this time. The motion to consolidate is denied without prejudice to its renewal before either three-judge court. So ordered (mailed notice) (Also in 68 Civ. 2938).
Sept. 30, 1968 –	Filed Designation of Judges to hear and determine said causes in addition to Hon. Constance Baker Motley: Hon. Henry J. Friendly, U.S.C.J., Hon. Dudley B. Bonsal, U.S.D.J. Lumbard, Ch. J. U.S.C.A. (Also in 68 Civ. 2938).
Oct. 30, 1968 –	Filed Notice of Motion Ret. 11/1/68 at 11:45 A.M. in the Court of Appeals Court Room, 17th Floor re: dismiss complaints, etc. (3-Judge Court) (Filed in 68 Civ. 2938).
Oct. 31, 1968 –	Filed Plaintiffs' Memorandum of Law before 3-Judge Court.
Nov. 1, 1968 –	Filed Amended Complaint.
Nov. 1, 1968 –	Before 3 Judge Court, FRIENDLY, C. J., BONSAL, D.J. and MOTLEY, D.J. Hearing on Motions adjourned to 11/13/68 at 3:30 P.M.
Nov. 12, 1968 –	Filed defts' memorandum in opposition to pltffs' motion for summary judgment.

Docket entries

Date	Proceedings
Nov. 12, 1968	– Filed Affidavits and 9(g) Statement. (Also in 68 Civ. 2938).
Nov. 13, 1968	– Before Statutory Court –– hearing held & concluded – decision reserved.
Nov. 14, 1968	– Filed Second AMENDED COMPLAINT.
Nov. 25, 1968	– Filed Plaintiffs' Reply Memorandum.
Feb. 17, 1969	– Filed OPINION NUMBERS 35615A and 35615B by FRIENDLY, C.J., BONSAL and MOTLEY. (Also in 68 Civil 2938).
Mar. 17, 1969	– Filed ORDER TO SHOW CAUSE – Ordered that defts show cause on Mar. 21, 1969 in the Court of Appeals Court room at 4:00 why an order should not be made granting Pltffs rehearing of motions and entering an order dismissing the complaint. Motley J.
May 15, 1969	– Filed report with notice of Filing.
May 21, 1969	– Filed Plaintiff Wexler, *et al.* Response. (Also in 68 Civil 2938).
May 29, 1969	– Filed Defendants Reply to Plaintiffs' Response dated 5/20/69.
June 16, 1969	– Filed JUDGMENT. Ordered that:

1. This Court was properly convened and has jurisdiction.
2. New York State statutes etc. do not violate the 14th Amendment.
3. Question 27(a) is further revised as indicated.
4. Motions of plts. and defts. are granted to the extent herein provided, and are otherwise denied.

Date	Proceedings
	5. No party shall recover costs. Bonsal, J. (JUDGMENT ENT. 6/16/69). Ent. 6/18/69. (Also in 68 Civ. 2938). (mailed notice).
Aug. 8, 1969	– Filed pltffs. NOTE OF APPEAL U.S. Supreme Court of the U.S.

UNITED STATES DISTRICT COURT
For the Southern District of New York
68 Civ. 2938

STEPHEN MARTIN WEXLER, H. GABRIEL KAIMOWITZ, ROBERT M. COVER, THE COLUMBIA LAW STUDENTS GUILD, NEW YORK CITY CHAPTER OF NATIONAL LAWYERS GUILD,

Plaintiffs,

—v.—

THE SUPREME COURT OF THE STATE OF NEW YORK, Appellate Division, First Judicial Department, and BERNARD BOTEIN, as Presiding Justice, JAMES B. M. McNALLY, BENJAMIN J. RABIN, ARON STEUER, GEORGE TILZER, HAROLD STEVENS, SAMUEL W. EAGER, LOUIS J. CAPPOZZOLI, OWEN McGIVERN, as Associate Justices; THE SUPREME COURT OF THE STATE OF NEW YORK, Appellate Division, Second Judicial Department, and GEORGE J. BELDOCK, as Presiding Justice, A. DAVID BENJAMIN, ARTHUR D. BRENNAN, MARCUS G. CHRIST, SAMUEL RABIN, FRED J. MUNDER, JAMES D. HOPKINS, M. HENRY MARTUSCELLO, as Associate Justices; THE COMMITTEE ON CHARACTER AND FITNESS, Supreme Court of the State of New York, Appellate Division, First Judicial Department, and LOWELL WADMOND, as Chairman, BRUCE BROMLEY, THOMAS B. DYETT, ALFRED A. GIARDINO, MONROE GOLDWATER, MARK F. HUGHES, ARTHUR H. SCHWARTZ, BERNARD TRENCHER, EDWIN L. WEISL, as Members; THE COMMITTEE ON CHARACTER AND FITNESS, Supreme Court of the State of New York, Appellate Division, Second Judicial Department, and EDWARD A. VOSSELER, as Chairman, BERNARD J. FERGUSON, REGINALD C. SMITH, RICHARD J. MALONEY, EDWARD B. BERMAS, ROBERT R. SUGARMAN, WILLIAM R.L. COOK, OSCAR KATZ, DAVID R. SIEGEL, ROY M.D. RICHARDSON, FRANK J. LYNCH, JR. as Members,

Defendants.

Docket Entries*

Date	Proceedings
July 17, 1968 –	Filed complaint and issued summons.
Aug. 9, 1968 –	Filed Notice of Motion re: Convene 3-Judge Court, etc. Ret. 8/20/68.
Aug. 9, 1968 –	Filed Memorandum in support of motion for 3-Judge Court.
Aug. 26, 1968 –	Filed ANSWER of defts to complaint.
Aug. 26, 1968 –	Filed Affidavit by Atty. Genl. in opposition to motion to convene 3-judge court.
Aug. 26, 1968 –	Filed Brief of Attorney General in opposition to motion to convene 3-judge court.
Oct. 31, 1968 –	Filed Supplemental Memorandum in support of motion for pre. injun.
Nov. 7, 1968 –	Filed Amended Complaint.
Nov. 25, 1968 –	Filed Plaintiffs' Reply Memorandum.

*These entries are limited to those papers filed and actions taken exclusively with respect to 68 Civ. 2938. All other relevant docket entries were made after consolidation of this case with 68 Civ. 2917 and are listed appropriately *supra* at pp. 2-4.

SECOND AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
Southern District of New York

---

68 Civ. 2917

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., TOBY B. GOLICK, JAMES C. MAURO, JR. and WILLIAM H.B. RODARMOR on behalf of themselves and all other persons similarly situated,

Plaintiffs,

—against—

LOWELL WADMOND, FELIX A. MULDOON, EDWIN L. WEISL, MARK F. HUGHES, BRUCE BROMLEY, MONROE GOLDWATER, ARTHUR H. SCHWARTZ, BERNARD TRENCHER, THOMAS B. DYETT and ALFRED A. GIARDINO as Chairman and members of the Appellate Division First Department Committee on Character and Fitness of Applicants for Admission to the Bar, THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION AND OTHER RELIEF

Plaintiffs, as and for their second amended complaint, respectfully allege:

JURISDICTION

1. Plaintiffs bring this action for declaratory and injunctive relief, pursuant to 28 U.S.C. §§ 1343, 2201, 2202, 2281, pursuant to 42 U.S.C. § 1983, and pursuant to the inherent power of this Court to control admission of attorneys to its Bar.

Plaintiffs seek relief under the following amendments to the Constitution of the United States: First, Fifth, Sixth, Ninth and Fourteenth.

2. Plaintiffs bring this action on their own behalf and on behalf of all persons who are law students and plan to apply for admission to the Bar of the State of New York and on behalf of all persons, whether or not they are now law students, who plan to apply for admission to the Bar in the State of New York. Such class is a class too numerous to bring before the Court and the rights of all members of that class will be adequately represented by the plaintiffs.

3. Plaintiff, LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., (hereinafter "the Council") is a non-profit membership corporation, organized under the laws of the District of Columbia, with its principal office at 156 Fifth Avenue, New York, New York.

Its Articles of Incorporation provide, as its principal objectives, that the corporation shall:

"engage in non-partisan research, study and analysis of the law with a view to eliminate prejudice and discrimination; to defend human and civil rights secured by law; and to make public the conclusions reached through such studies." The articles also provide that the corporation shall "provide a civil rights program where students may study with and assist members of the legal profession in the civil rights field on behalf of indigent, poor and distressed, or underprivileged litigants on civil rights cases."

The membership of the Council is composed of approximately 1,500 law students from sixty law schools throughout the country. There are chapters of the Law Students Civil Rights Research Council in the City of New York at the Law Schools of Brooklyn, Columbia, Fordham and New York University.

Among the members of the Council there are many who are residents in the First Judicial Department and who have either applied or intend to apply for membership in the New York Bar in said Department.

Pursuant to the provisions of its Articles of Incorporation, the Council actively seeks to involve law students in the work of civil rights, civil liberties and poverty organizations and of attorneys active in these areas throughout the country. The Council's work can succeed only if law students may freely engage themselves in these efforts while and before entry into law school uninhibited by the fear of subsequent delay in or denial of admission to practice because of prior involvements and associations. This being the case, the Council and its members have a direct interest in judicial administration, particularly as it relates to the process for admission to the Bar of this Court, which incorporates the procedures, rules, regulations and practices set forth for admission to the Bar of the State of New York and Rule 3, General Rules, United States District Courts for the Southern and Eastern Districts of New York.

As specifically related to its members, the Council sues on behalf of those who are or will be applying for admission to the Bar of the State of New York and whose exercise of the rights of speech and association is or may be threatened, deterred and restricted by their fears of being refused or delayed admission to the Bar because of their activities before and while in law school.

4. The individual plaintiffs herein plan to apply for admission to the Bar of New York State upon graduation from law school. The plaintiffs bring this action in their own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

5. Defendants, LOWELL WADMOND, FELIX A. MULDOON, EDWIN L. WEISL, MARK F. HUGHES, BRUCE BROMLEY, MONROE GOLDWATER, ARTHUR H. SCHWARTZ, BERNARD TRENCHER, THOMAS B. DYETT, and ALFRED A. GIARDINO are sued in their capacities as Chairman and members respectively of the Committee on Character and Fitness for the First Judicial Department of New York State. The Supreme Court, Appellate Division, First Department is given the power by Section 90 of the Judiciary Law to admit attorneys to the practice of law.

STATUTES AND RULES

6. Admission to the bar in the First and Second Judicial Departments of New York State is governed by Rules 9401, 9404 and 9406 of the New York Civil Practice Law and Rules, § 90 of the Judiciary Law of the State of New York, Rule Eight of the Rules for Admission of Attorneys and Counselors-at-Law of the Court of Appeals and part 3, Rule I of the Rules of the Supreme Court, Appellate Division, First Department. The relevant portions of these statutes are set forth below:

Rule 9401 of the New York Civil Practice Law and Rules, entitled "Committee," provides in pertinent part that:

> The appellate division in each judicial department shall appoint a committee of not less than three practicing lawyers for each judicial district within the department, for the purpose of investigating the character and fitness of every applicant for admission to practice as an attorney and counselor at law in the courts of this state.

Rule 9404 of the New York Civil Practice Law and Rules, entitled "Certificates of Character and Fitness," provides that:

> unless otherwise ordered by the appellate division, no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission. To enable the committee to make such investigation the committee, subject to the approval of the justices of the appellate division, is authorized to prescribe and from time to time to amend a form of statement or questionnaire on which the applicant shall set forth all the information and data required by the committee and the appellate division justices, including specific[ ] his present and such past places of actual residence, [as] may be required by the committee and the appellate division, listing the street and number, if any, and the period of time he resided at each place.

Rule 9406 of the New York Civil Practice Law and Rules, entitled "Proof," provides in pertinent part that:

> No person shall receive said certificate from any committee and no person shall be admitted to practice as an attorney and counsellor-at-law in the courts of this state, unless he shall furnish satisfactory proof to the effect:
>
> 1. that he believes in the form of government of the United States and is loyal to such government. . . .

Section 90 of the Judiciary Law of New York State provides, in part, that:

> 1.a. Upon the state board of law examiners certifying that a person has passed the required examination, or that the examination has been dispensed with, the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if it shall be satisfied

that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys.

Rule VIII of the Rules for Admission of Attorneys and Counsellors-at-Law of the Court of Appeals entitled "Proof of moral character", reads as follows:

VIII-1 *General regulation.* Every applicant for admission to the Bar must produce before a Committee on Character and Fitness appointed by an Appellate Division of the Supreme Court and file with such Committee evidence that he possesses the good moral character and general fitness requisite for an attorney and counsellor-at-law as provided in Section 90 of the Judiciary Law, which must be shown by the affidavits of two reputable persons residing in the city or county in which he resides, one of whom must be a practicing attorney of the Supreme Court of this State.

VIII-2 *Supporting Affidavits.* Such affidavits must state that the applicant is, to the knowledge of the affiant, a person of good moral character and must set forth in detail the facts upon which such knowledge is based. Such affidavits shall not be conclusive, and the court may make further examination and inquiry through its Committee on Character and Fitness or otherwise.

VIII-4 *Discretion of Appellate Division.* The justices of the Appellate Division in each department shall adopt

for their respective departments such additional rules for ascertaining the moral and general fitness of applicants as to such justices may seem proper.

Part 3 of the Rules of the Supreme Court, Appellate Division, First Department, provides:

> Rule 1. *Applications Under Rule VII of the Court of Appeals.*
>
> 1. Every application for admission to practice as an attorney and counsellor-at-law under Rule VII of the Rules of the Court of Appeals for admission of attorneys and counsellors-at-law shall, in addition to the proof required by said rule, and by Article 94 CPLR, present to the court proof of the qualifications required for the admission of an attorney and counsellor-at-law in the state in which he had been admitted and had practiced, and the nature of the examination required of an applicant for admission to practice as an attorney and counsellor-at-law in such state.
>
> 2. Every application for admission to practice under Rule VII of the Rules of the Court of Appeals for the admission of attorneys and counselors-at-law shall be referred to the Committee on Character and Fitness who shall report to the court upon the character and qualifications of the applicant to be admitted to practice in the courts of this state, and no person shall be admitted to practice on such an application until after the Committee on Character and Fitness shall have made its report.

7. The General Rules of the United States District Courts for the Southern and Eastern Districts of New York provide in Rule 3 that a person may be admitted to practice in those

courts if he has been a member in good standing of the New York Bar for one year.

8. The questionnaire used presently in the First Department is attached to and made part of this complaint as Exhibit "A". Questions 26 and 27, among others, are particularly relevant to the claims of law which follow.

THE FACTS

9. Preceding the determination that an individual possesses the requisite good moral character and general fitness which are required for admission to the Bar, the Committee on Character and Fitness conducts individual interviews with the applicants. During such interviews, on the basis of the applicant's answers to the questionnaire or on the basis of other information, the applicant is subjected to questions on a wide range of subject matter which may and often does include his personal, political and religious beliefs and his prior and his present associations with any organizations, without regard to remoteness in time or relevance to professional qualifications.

10. The statutory scheme, including the questionnaire and interviewing procedures, is void on its face and as applied, in that:

(a) It creates a chilling effect upon the exercise of the rights of free association and expression protected by the First and Fourteenth Amendments to the United States Constitution.

(b) It unlawfully inquires into religious, political and other associations, beliefs, and private matters in violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

(c) It unlawfully delegates, by means of overly broad, vague and unascertainable standards the authority to the defendants to deprive plaintiffs and their class of admission to the Bar, in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution.

(d) It denies to plaintiffs the right to a fair hearing and other procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

(e) It violates due process of law and freedom of speech by placing on plaintiffs the burden of proving their loyalty and belief in the form of government of the United States, in violation of the First and Fourteenth Amendments to the United States Constitution.

(f) It unlawfully inquires into associations out of which incrimination might arise, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

(g) It unlawfully tends to keep from admittance to the Bar and from seeking admittance to the Bar a class or category of lawyers whose consequent unavailability to the clients seeking such attorneys deprives such attorneys and clients of rights guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

(h) It undermines the vigor and independence of the bar in derogation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

(i) It unconstitutionally interferes with the proper functioning of the bar of this court and of other United

States District Courts, in that the bulk of its members are screened for admission by the procedures outlined above.

11. Plaintiffs and their class are being damaged and will continue to be so unless the relief sought herein is granted. Individual plaintiffs have been, are being, and will continue to be deterred from freely expressing orally and in writing their thoughts and opinions on a variety of political and other subjects and from freely associating with other persons and groups for fear that such associations and expression, learned of by defendants or their successors in office, will hamper, delay or make impossible their admittance to the Bar of this Court. The corporate plaintiff is suffering and will continue to suffer from the inhibiting effect of the procedures for admission to the Bar in the State of New York in the First and Second Judicial Departments in that persons who would otherwise become members of plaintiff or work with plaintiff to achieve its purposes are chilled and deterred from doing so.

12. Plaintiffs have no adequate remedy at law.

WHEREFORE, it is prayed that the following relief be granted.

1. The convening of a special United States District Court of three judges to hear and determine this action, pursuant to Sections 2281 and 2284 of Title 28 of the United States Code.

2. The issuance of a declaratory judgment defining the constitutional rights of the plaintiffs and invalidating those parts of the statutory scheme for admission to the Bar of New York State which violate the constitutional rights of plaintiffs and the class they represent in the manner above described.

3. The granting of a preliminary and permanent injunction restraining the defendants, their agents and employees

from further violation of the said constitutional rights of plaintiffs and the class they represent through the use of questionnaires and personal interviews or in any other manner.

4. The granting of such other relief as the Court may deem proper.

JEREMIAH S. GUTMAN
363 Seventh Avenue
New York, N. Y. 10001

ALAN H. LEVINE
156 Fifth Avenue
New York, N. Y. 10010

STEVEN J. GOLDSMITH
71 Worth Street
New York, N. Y.

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Form A (1M-7-68) 7801 94

DEAD-LINE FOR SUBMISSION_____

Applicant's Office Telephone..... ISSUED.....

Applicant's Home Telephone..... SUBMITTED.....

Appelate Division, Supreme Court
First Judicial Department
Committee on Character and Fitness
of
Applicants for Admission to the Bar

APPLICATION FOR ADMISSION TO THE BAR AND STATEMENT REQUIRED PURSUANT TO ARTICLE 94 OF THE CIVIL PRACTICE LAW AND RULES

DIRECTIONS

(Read all these directions carefully before attempting to answer any question.)

1. This is a statement made under oath. Applicant's failure fully and accurately to disclose any fact or information called for by any question may result in the denial of the application for admission, or if applicant shall have been admitted before the discovery thereof, in the revocation of his license to practice law.

2. Answers must be in black ink, preferably in typewriting, but may be in applicant's handwriting.

3. *Unless otherwise indicated, every question and every part of each question must be answered, even though the answer be negative.*

4. Where "Yes" or "No" suffices, employ that form in answer.

5. If the applicant cannot comply with any of the requirements, he must state in detail the efforts he has made to comply and why he cannot. Answers on information and belief will be accepted only in connection with matters which the applicant cannot be expected to remember because of extreme youth or other equally sufficient reason. All statements made on information and belief must be so designated in the *sworn statement, and the sources of information must be given.*

6. Should the space left for any answer be insufficient, the applicant shall complete his answer on a rider, attached to page 11 hereof, specifying the number of the question to which it relates. Each rider page should be signed. Avoid riders whenever possible.

7. In stating addresses give street and number, if any, city, village, county and state or country.

8. In giving a period which is continuing at the date of verification of this sworn statement, always give such period as continuing "to date."

TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT:

The undersigned hereby applies for admission to practise as an attorney and counselor-at-law in all courts of the State of New York, and in support of such application submits the following sworn statement and the accompanying affidavits and other papers:

1. (a) State name in *full* _____
(First) (Middle) (Last)

(b) Have you ever used or been known by any other name?_____If so, state in full each name (other than the name above given) which you have used or by which you have at any time been known, the period of, and the reasons for, the use of each such name. (If change of name was made by court order, submit copy of petition, a certified copy of the order and certificate of compliance therewith; if by marriage, submit copy of marriage certificate.)

2. State the following:

(a) Age, date, and place of birth.

OVERSIZE PAGE SEE NEXT FRAME

APPLICATION FOR ADMISSION TO THE BAR AND STATEMENT REQUIRED PURSUANT TO ARTICLE 94 OF THE CIVIL PRACTICE LAW AND RULES

DIRECTIONS

(Read all these directions carefully before attempting to answer any question.)

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TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT:

The undersigned hereby applies for admission to practise as an attorney and counselor-at-law in all courts of the State of New York, and in support of such application submits the following sworn statement and the accompanying affidavits and other papers:

1. (a) State name in *full* ..... (First) (Middle) (Last)

(b) Have you ever used or been known by any other name? ..... If so, state in full each name (other than the name above given) which you have used or by which you have at any time been known, the period of, and the reasons for, the use of each such name. (If change of name was made by court order, submit copy of petition, a certified copy of the order and certificate of compliance therewith; if by marriage, submit copy of marriage certificate.)

2. State the following:

(a) Age, date, and place of birth.

(b) If you are a naturalized or derivative citizen, the date when and place where naturalization or right to derivative status was acquired, and exhibit certificate of naturalization or equivalent from any governmental office. (Such certificate will be returned.)

(c) Present residence (full mailing address).

(d) Full name of all persons with whom you are presently living, and relationship to you.

(e) Length of actual residence in the State of New York.

3. State whether married or single. If ever married, answer the following:

(a) When, where, and to whom married; give spouse's full name, together with any other name by which spouse has been known. (If married more than once, list marriages chronologically.)

(b) Do you reside with your spouse?..... If not, state reasons for separation (if through divorce, annulment or separation, submit copy of pleadings, certified copy of decree, judgment or order and proof of compliance with any directive portions thereof).

4. Give the following information relating to your parents:

	Father	Mother
(a) Name in full		
(b) Born in United States (Yes or No)		
(c) Living or not (Yes or No)		
(d) Residence		
(e) Present, or if retired or deceased, most recent occupation		

5. Give the following information as to residence.

(a) The cities and states or countries in which you resided for more than three months from the date of your birth until you first entered high school or its equivalent. (If answer is on information and belief, state source of information.)

(b) The full and exact address of your residence at the time you first entered high school or its equivalent.

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	Father	Mother
(a) Name in full		
(b) Born in United States (Yes or No)		
(c) Living or not (Yes or No)		
(d) Residence		
(e) Present, or if retired or deceased, most recent occupation		

5. Give the following information as to residence.

(a) The cities and states or countries in which you resided for more than three months from the date of your birth until you first entered high school or its equivalent. (If answer is on information and belief, state source of information.)

(b) The full and exact address of your residence at the time you first entered high school or its equivalent.

(c) State every permanent and temporary residence you have ever had, in the United States or elsewhere, since first entering high school or its equivalent with exact address of each, and the month and year of the beginning and ending of each such residence. (Exclude military addresses, unless off base.)

Permanent Residences

(List same chronologically beginning with the earliest date. *Temporary residences*, which are residences *away from home* for educational, business or other special purposes, are to be listed on next page. *Do not interrupt the continuity of the periods of permanent residence by subtracting periods of temporary residence.*)

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county	State or Country

(Continue permanent residences if necessary, and give temporary residences on next page.)

(Permanent Residences Continued)

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county	State or Country

Temporary Residences

(These include only residences **away from home** for educational, business or other special purposes except summer vacations. Do not interrupt continuity of periods or permanent residence, to be given above, **by subtracting periods** of temporary residence.)

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county	State or Country

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Temporary Residences

(These include only residences **away from home** for educational, business or other special purposes except summer vacations. Do not interrupt continuity of periods or permanent residence, to be given above, **by subtracting periods** of temporary residence.)

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county	State or Country

6. List **all schools** below college grade attended, giving **month and year** of the beginning and ending of attendance at each.

Name or designation of school	City, town or county	State	Month and year

Did you graduate from high school?_____ Date of graduation_____

7. List **college or colleges** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and Ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Sessions (Full-time day or evening)

8. If you did not receive a college degree before entering low school, give date of filing Law Student's Qualifying Certificate_____.

9. List **law schools** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and Ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Sessions (Full-time day or evening)

10. List any other schools attended or courses of study pursued, in addition to those hereinabove mentioned.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and Ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Sessions (Full-time day or evening)

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8. If you did not receive a college degree before entering low school, give date of filing Law Student's Qualifying Certificate_____.

9. List **law schools** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and Ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Sessions (Full-time day or evening)

10. List any other schools attended or courses of study pursued, in addition to those hereinabove mentioned.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and Ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Sessions (Full-time day or evening)

11. (a) Have you ever been denied admission to any school, college, law school, or other similar institution?

(b) Have you ever been placed on probation, or dropped, or suspended or expelled from, or have you withdrawn from or left, any institution of learning, **or otherwise been subjected to discipline for conduct or scholarship, by any such institution,** or requested or advised for any reason to discontinue your studies therein temporarily or otherwise?

If your answer is "Yes" to either (a) or (b), give the name of any such institution and state the circumstances and date of each such occurrence.

12. Have you ever been employed in a business, profession or occupation other than law?.....
If so, enumerate all such employments in chronological order. Include employments by members of family or other relatives and employments with or without monetary compensation. Submit letter on letterhead of employer or an affidavit from each such employer giving nature of employment, period of service, whether or not satisfactory and reason for termination.

Month and Year of Beginning and Ending of Period of Employment	Name of Employer (Individual, partnership or corporation. Do not give name of an agent of employer.)	Address of Employer (Give street, number, city or town and state or country.)	Nature of Employer's Business	Position or Positions held by Applicant	Reason for Termination

13. Have you ever been employed in or associated with any law office, law department or legal institution? If so, enumerate all such employments and associations in chronological order. Include employments by members of family or other relatives and employments with or without monetary compensation. Submit affidavit from each employer giving same information as required under question 12.

Name of Employer					

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13. Have you ever been employed in or associated with any law office, law department or legal institution? If so, enumerate all such employments and associations in chronological order. Include employments by members of family or other relatives and employments with or without monetary compensation. Submit affidavit from each employer giving same information as required under question 12.

Month and Year of Beginning and Ending of Period of Employment	Name of Employer (Individual, partnership or corporation. Do not give name of an agent of employer.)	Address of Employer (Give street, number, city or town and state or country.)	Nature of Employer's Business	Position or Positions held by Applicant	Reason for Termination

14. Have you ever been engaged on your own account in any occupation, business, or profession?.....

If so, give in detail the nature and location thereof and the **month and year** of the beginning and ending of your engagement in or connection therewith. If any such business was carried on by you in partnership with others, give the names and addresses of all partners and the nature of the business. If the business was carried on by a corporation in which you owned an interest state its name, address, nature of the business and your connection with it. If any business or profession in which you were engaged has been discontinued or your connection therewith has ceased state whether and why there are unpaid judgments, debts or claims or pending litigation.

15. Have you ever been discharged by any employer?.....

If so, give the name of each such employer stating date, cause and circumstances of discharge.

16. Do you affirmatively represent that, in connection with all your employments for which no proof has been supplied, your services were satisfactory and that you were not discharged nor were your services terminated for cause, nor were you requested or advised to resign from or leave any such position? ..... If answer is "No" give full details as to each such incident.

17. (a) Have you ever heretofore applied for admission to the Bar of the State of New York? .....

(b) Have you ever engaged in or has your conduct ever been called into question with reference to the unauthorized practice of law? .....

(c) Have you ever been employed by or otherwise connected with any person, firm, or corporation whose conduct was called into question on the subject of unauthorized practice of law while you were so employed or connected?

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15. Have you ever been discharged by any employer?.....

If so, give the name of each such employer stating date, cause and circumstances of discharge.

16. Do you affirmatively represent that, in connection with all your employments for which no proof has been supplied, your services were satisfactory and that you were not discharged nor were your services terminated for cause, nor were you requested or advised to resign from or leave any such position? ..... If answer is "No" give full details as to each such incident.

17. (a) Have you ever heretofore applied for admission to the Bar of the State of New York? .....

(b) Have you ever engaged in or has your conduct ever been called into question with reference to the unauthorized practice of law? .....

(c) Have you ever been employed by or otherwise connected with any person, firm, or corporation whose conduct was called into question on the subject of unauthorized practice of law while you were so employed or connected? .....

(d) Have you ever tried any action or proceeding, argued any motion, drawn legal papers, given legal advice or held yourself out as an attorney or counselor-at-law in this State? .....

If your answer is "Yes" as to any part of this question, state the matter fully.

18. (a) Have you ever registered as a law student, or applied to take or taken the bar examination in any country, state or jurisdiction other than the State of New York?.....

(b) Have you ever applied for admission to practice as an attorney or counselor in any country, state or jurisdiction other than the State of New York?.....

If your answer to (a) or (b) is "Yes," state specifically the disposition made of the application or the result of the bar examination. If admitted, state (a) the name and address of each court by which admitted, the date of such admission, the periods of practice and all the office addresses where you have practiced, with the names and addresses of partners, if any, and (b) whether you have ever been reprimanded, disciplined, suspended, or disbarred as an attorney or counselor-at-law, or whether any charges or complaints have ever been preferred against you, and if so, the nature of the charges and their disposition.

(Applicants admitted in other jurisdictions must submit a certificate of admission and good standing at the Bar of each court to which admitted and a letter from each Grievance Committee, or body entertaining complaints against lawyers, certifying as to whether charges have been filed with such Committee or body against the applicant, and, if so, the substance of charges and the disposition thereof.)

19. Are you registered for Selective Service? If so, state local board number and address, your present classification and, if classification has been changed, previous classification and date of change.

20. Have you ever been rejected for service in any of the armed forces of the United States or of any other country? If your answer is "Yes," give date and reason, stating facts fully, whether the reason be physical, mental, moral or otherwise and submit photocopy of any documentary proof thereof.

21. (a) Have you at any time or in any manner, served in any of the armed forces of the United States, including reserves? If the answer is "Yes," state (1) when, where, and which service; (2) period and nature of service rendered; (3) if discharged give date and nature of discharge and submit photocopy of each release or discharge certificate.

(b) Have you served in the armed forces (reserves or otherwise) of any country other than the United States of America? If the answer is "Yes", give name of country, inclusive dates of service, and reason for separation from service. (Submit photocopy of each discharge or release.)

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19. Are you registered for Selective Service? If so, state local board number and address, your present classification and, if classification has been changed, previous classification and date of change.

20. Have you ever been rejected for service in any of the armed forces of the United States or of any other country? If your answer is "Yes," give date and reason, stating facts fully, whether the reason be physical, mental, moral or otherwise and submit photocopy of any documentary proof thereof.

21. (a) Have you at any time or in any manner, served in any of the armed forces of the United States, including reserves? If the answer is "Yes," state (1) when, where, and which service; (2) period and nature of service rendered; (3) if discharged give date and nature of discharge and submit photocopy of each release or discharge certificate.

(b) Have you served in the armed forces (reserves or otherwise) of any country other than the United States of America? If the answer is "Yes", give name of country, inclusive dates of service, and reason for separation from service. (Submit photocopy of each discharge or release.)

22. As a member of any armed forces have you been the subject of any charges or complaints, formal or informal, or have any proceedings been instituted against you, or have you been a defendant in any court martial proceeding? If answer is "Yes," state the facts.

23. State whether you ever have

(a) testified or been called as a witness in any action, proceeding or investigation to which you were not a party? _____

(b) been ticketed, or summoned, or arrested, or taken into custody, or indicted, or convicted, or tried for, or charged with, or pleaded guilty to, the violation of any law, ordinance, traffic or parking regulation or the commission of any felony or misdemeanor, or been requested to appear before any prosecuting or investigative agency in any matter? _____
(Indicate all such incidents, including proceedings as a juvenile or youthful offender, no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court, it nevertheless should be disclosed in the answer to this question.)

(c) failed to answer on the return date any ticket, summons or other legal process served upon you at any time? _____ If so, was any warrant, subpoena, or further process issued against you as a result of your failure to respond to such legal process?

(d) been declared a ward of any court, or adjudged an incompetent, or had proceedings brought to have you declared a ward of any court or adjudged an incompetent; or have you been committed to or been a patient in any institution for the care of persons suffering from mental or nervous disorders or drug addiction, drug abuse or alcoholism? _____

(e) Been charged with fraud or any other act involving moral turpitude? _____

(f) been a party to or otherwise involved in any action, proceeding or investigation (civil or criminal) not covered by answers to the foregoing subdivisions hereof? _____

If your answer is "Yes" to any subdivision of this question indicate the subdivision and state the facts in detail below and give in each case name and locality of court or agency, dates of beginning and termination of action or proceeding, and the judgment or other disposition.

24. (a) Are there any unsatisfied judgments against you? If so, list the same giving name and address of judgment creditor and the court by which judgment was rendered, together with the date and amount thereof and the nature of the claim on which it was based.

(b) Are you in default in the performance or discharge of any duty or obligation imposed upon you by any governmental agency or decree or order of any court including alimony and support orders and decrees? _____ If so, state the facts.

(c) Are you indebted to anyone? If so, list all debts stating name and address of creditor and amount, date, nature and status of indebtedness.

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24. (a) Are there any unsatisfied judgments against you? If so, list the same giving name and address of judgment creditor and the court by which judgment was rendered, together with the date and amount thereof and the nature of the claim on which it was based.

(b) Are you in default in the performance or discharge of any duty or obligation imposed upon you by any governmental agency or decree or order of any court including alimony and support orders and decrees? ..... If so, state the facts.

(c) Are you indebted to anyone? If so, list all debts stating name and address of creditor and amount, date, nature and status of indebtedness.

(d) Has any one ever asserted as a matter of right a claim or demand against you which has not been made the subject of any action or legal proceeding? If so, state the facts and the present status of the matter.

(e) Have you ever asserted as a matter of right any claim or demand against any person, partnership or corporation, or governmental agency which has not been made the subject of any action or legal proceeding? ..... If so, state the facts and the present status of the matter.

25. (a) Have you ever held a license the procurement of which required proof of good character? ..... If so, as to each such license, state the date it was granted and the name and address of the authority granting it.

(b) If your application for such a license was not granted, state the facts.

(c) Have you ever held a bonded position? ..... If so, specify the nature of position, dates, amount of bond, and whether or not anyone ever sought to recover on your bond or cancel the same?

26. Have you ever organized or helped to organize or become a member of or participated in any way whatsoever in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means? ..... If your answer is in the affirmative, state the facts below.

27. (a) Do you believe in the principles underlying the form of government of the United States of America? .....

(b) Can you conscientiously, and do you, affirm that you are, without any mental reservation, loyal to and ready to support the Constitution of the United States? .....

28. (a) Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or social services? ..... If so, state fully.

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(c) Have you ever held a bonded position?..... If so, specify the nature of position, dates, amount of bond, and whether or not anyone ever sought to recover on your bond or cancel the same?

26. Have you ever organized or helped to organize or become a member of or participated in any way whatsoever in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means? ..... If your answer is in the affirmative, state the facts below.

27. (a) Do you believe in the principles underlying the form of government of the United States of America? .....

(b) Can you conscientiously, and do you, affirm that you are, without any mental reservation, loyal to and ready to support the Constitution of the United States? .....

28. (a) Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or socal services? ..... If so, state fully.

(b) If you engaged in extracurricular activities (athletic, dramatic, debating, club, committee, administration, etc.) in college, indicate approximate amount of time spent and responsibility involved.

29. (a) Give the names, addresses, objects and period of membership in each and every club, association, society or organization of which you are or have been a member other than those associated with and recognized by accredited schools and colleges.

(b) Have you ever been disciplined, expelled, suspended, or ordered to resign from any club, association, society or organization?..... If your answer is "'Yes," state the facts.

30. If admitted do you intend to practice law?..... If you do not intend to practice law state why.

31. Is there any incident in your life not called for by the foregoing questions which has any favorable or detrimental bearing on your character or fiitness? If the answer is "Yes" state the facts.

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(b) Have you ever been disciplined, expelled, suspended, or ordered to resign from any club, association, society or organization?..... If your answer is "'Yes," state the facts.

30. If admitted do you intend to practice law?..... If you do not intend to practice law state why.

31. Is there any incident in your life not called for by the foregoing questions which has any favorable or detrimental bearing on your character or fiitness? If the answer is "Yes" state the facts.

32. (a) Have you read the Canons of Ethics adopted by the American and New York State Bar Associations?.....

(b) Will you conscientiously endeavor to conform your professional conduct to them?.....

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THE FOLLOWING TWO PARAGRAPHS ARE TO BE COPIED BY THE APPLICANT IN HIS USUAL HANDWRITING IN THE SPACE PROVIDED BELOW:

I understand that this application is a continuing application, and that I must give correctly the information herein sought as of the date of my appearance before the Appellate Division to be sworn in as an attorney and counselor-at-law. I will, therefore, before such appearance, notify the Secretary of the Committee by affidavit as to any change in respect of any matter concerning which information is herein sought.

I will also submit such additional affidavits or papers, and supply such additional information as may be requested.

COPY FOREGOING TWO PARAGRAPHS HERE

Signature of applicant.....

(Must conform to name as it appears on Certificate of State Board of Law Examiners)

STATE OF .....
} ss.:
COUNTY OF .....

I, _____, being duly sworn, say: I have read the foregoing questions and have fully, truthfully and accurately answered the same. The foregoing answers are true of my own knowledge, except if stated to be made upon information and belief, and as to such answers, I believe them to be true.

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Signature of applicant.....

(Must conform to name as it appears on Certificate of State Board of Law Examiners)

STATE OF .....
} ss.:
COUNTY OF .....

I, _____, being duly sworn, say: I have read the foregoing questions and have fully, truthfully and accurately answered the same. The foregoing answers are true of my own knowledge, except if stated to be made upon information and belief, and as to such answers, I believe them to be true.

Signature of applicant.....

(Sign as above)

Subscribed and sworn to before me this day of , 19 .

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
Southern District of New York

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68 Civ. 2938

STEPHEN MARTIN WEXLER, H. GABRIEL KAIMOWITZ, ROBERT M. COVER, THE COLUMBIA LAW STUDENTS GUILD, NEW YORK CITY CHAPTER OF NATIONAL LAWYERS GUILD,

Plaintiffs,

—against—

THE SUPREME COURT OF THE STATE OF NEW YORK, Appellate Division, First Judicial Department, and BERNARD BOTEIN, as Presiding Justice, JAMES B. M. McNALLY, BENJAMIN J. RABIN, ARON STEUER, GEORGE TILZER, HAROLD STEVENS, SAMUEL W. EAGER, LOUIS J. CAPPOZZOLI, OWEN McGIVERN, as Associate Justices; THE SUPREME COURT OF THE STATE OF NEW YORK, Appellate Division, Second Judicial Department, and GEORGE J. BELDOCK, as Presiding Justice, A. DAVID BENJAMIN, ARTHUR D. BRENNAN, MARCUS G. CHRIST, SAMUEL RABIN, FRED J. MUNDER, JAMES D. HOPKINS, M. HENRY MARTUSCELLO, as Associate Justices; THE COMMITTEE ON CHARACTER AND FITNESS, Supreme Court of the State of New York, Appellate Division, First Judicial Department, and LOWELL WADMOND, as Chairman, BRUCE BROMLEY, THOMAS B. DYETT, ALFRED A. GIARDINO, MONROE GOLDWATER, MARK F. HUGHES, ARTHUR H. SCHWARTZ, BERNARD TRENCHER, EDWIN L. WEISL, as Members; THE COMMITTEE ON CHARACTER AND FITNESS, Supreme Court of the State of New York, Appellate Division, Second Judicial Department, and EDWARD A. VOSSELER, as Chairman, BERNARD J. FERGUSON, REGINALD C. SMITH, RICHARD J. MALONEY, EDWARD B. BERMAS, ROBERT R. SUGARMAN, WILLIAM R.L. COOK, OSCAR KATZ, DAVID R. SIEGEL, ROY M.D. RICHARDSON, FRANK J. LYNCH, JR. as Members,

Defendants.

Plaintiffs, for their amended complaint, allege:

1. This action arises under the Constitution of the United States, in particular, Article III and the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments thereto. The jurisdiction of this Court is based upon 28 U.S.C. §§1331, 1343(3), 2281, 2284; 42 U.S.C. §1983; upon this Court's inherent supervisory power over admission to its Bar, and upon Article III of the Constitution and the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments thereto.

2. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand Dollars ($10,000.00).

3. This action is brought for declaratory relief pursuant to 28 U.S.C. §§2201 and 2202 and pursuant to 42 U.S.C. §1983 for a preliminary and permanent injunction against threatened acts and enforcement of certain unconstitutional statutes and regulations by defendants, which deprive plaintiffs, under color of state law, of rights, privileges and immunities secured by the Constitution of the United States.

4. Plaintiff, STEPHEN MARTIN WEXLER, is 24 years of age, a natural born citizen of the United States, and has since his birth maintained a permanent residence in the State of New York. Plaintiff is married and has maintained a permanent residence in the Borough of Manhattan, City of New York, continuously from September, 1960 to the present. He graduated from a New York public high school on or about June, 1960, received a Bachelor of Arts degree from Columbia University on or about June, 1964, a Bachelor of Laws degree from New York University on or about June, 1967, and a Master of Laws degree on or about June, 1968, from New York University.

He was duly qualified to take the New York State Bar Examination held on July 14 and July 15, 1967, and was

certified as having passed said Bar Examination on October 26, 1967, a copy of the Certificate of the State Board of Bar Examiners is appended to and made a part of this complaint, as Exhibit "A". He has never been arrested and has never been suspended or dismissed from any school or university.

5. Plaintiff, H. GABRIEL KAIMOWITZ, is 33 years of age and a natural born citizen of the United States. He resided permanently in the State of New York from his birth to January, 1956. From January 26, 1956 to December, 1957, plaintiff maintained a permanent residence at 1980 Kalakaua Avenue, Honolulu, Territory of Hawaii. During this period the plaintiff served on active duty in the United States Army, from which he received an honorable discharge in November, 1960. From January, 1958 to February, 1960, plaintiff maintained a permanent residence in Decatur, Illinois, where he was employed as an editorial writer for the Decatur *Herald* and other newspapers. From March, 1960 to the present, plaintiff has maintained a permanent residence in New York City during which time he was employed as a writer and copy editor for the Scripps-Howard Newspaper Enterprise Association, New York City; as Managing Editor of the Stratford *News*, Stratford, Connecticut, as a free-lance writer; as a reporter for *Television Age* Magazine, New York City; and an associate editor of *Current* Magazine, New York City; and from September, 1964 to June, 1967, plaintiff attended and graduated from New York University Law School. Plaintiff, who is married and has two children, has maintained a permanent residence in Kings County from July, 1966 to the present.

Plaintiff graduated from a New York Public High School in February of 1952; received a B.S. Degree from the University of Wisconsin in June, 1955; and from June, 1958 to June, 1959 completed all course work toward an M.S. Degree in radio and television broadcasting at the University of Illinois.

In addition to his journalistic employment, plaintiff was employed as a teacher at the predominantly Negro Bishop College, Dallas, Texas, by the Southern Teaching Program of New Haven, Connecticut, during the summer of 1965.

Plaintiff is presently employed as a staff member of the Columbia University Center on Social Welfare Policy and Law, Legal Activities and Research Division.

Plaintiff has actively engaged in political and labor activities in connection with his employment and in his private life.

Plaintiff was duly qualified to take the New York State Bar Examination held on March 20 and March 21, 1968, and was certified as having passed said Bar Examination on May 14, 1968; a copy of the Certificate of the State Board of Bar Examiners is appended to and made a part of this complaint as Exhibit "B". He has never been arrested and has never been suspended of dismissed from any school or university.

5a. Plaintiff, ROBERT M. COVER, is 25 years of age and a natural born citizen of the United States. He resided permanently at 67 Kenwood Street, Brookline, Massachusetts from his birth on July 30, 1943, to 1966. From 1966 to the present, the plaintiff has maintained a permanent residency in Manhattan, first at 55 Tieman Place and since October of 1967 at 106 W. 96th Street. Plaintiff was married in October of 1967.

Plaintiff graduated from Princeton University with a Bachelor of Arts degree in June, 1965 and from Columbia University Law School with a Bachelor of Laws degree in June, 1968.

Plaintiff is presently employed as an Assistant Professor of Law at Columbia University Law School where he teaches Civil Procedure, Family Law, Federal Courts and a Seminar on Narcotics.

In the summer of 1963, plaintiff was convicted of "Distributing Handbills", a misdemeanor, in Albany, Georgia. The ordinance under which plaintiff was convicted was improperly applied against plaintiff because of his civil rights activities in Albany.

Plaintiff was duly qualified to take the New York State Bar Examination held on July 18 and 19, 1968 and has received a passing grade on said Bar Examination.

Plaintiff has never been suspended or dismissed from any school or university.

6. The plaintiffs, STEPHEN MARTIN WEXLER, H. GABRIEL KAIMOWITZ, and ROBERT M. COVER, desire and are fully qualified and fit under statutory and judicial regulations (Judiciary Law §90 and Civil Practice Law and Rules §9401, et seq. Rule VIII of the Rules of the New York Court of Appeals for admission of attorneys and Counselors-at-laws and Rule I, Pt. 4 of the Rules of the Appellate Division, First Judicial Department) to be admitted to the Bar of the State of New York, but are prevented by and will not submit to the process and practices of admission established by the defendants, acting under unconstitutional state statutes and rules and regulations made pursuant thereto which improperly and illegally condition admission on the plaintiffs' proving their belief in and loyalty to the government of the United States, on their disclosure of speech, associations, activities and beliefs, in violation of their rights to personal and political privacy guaranteed by the First, Ninth and Fourteenth Amendments to the United States Constitution and on their meeting unconstitutionally vague and overbroad standards and qualifications respecting political beliefs, affiliations and speech.

7a. Plaintiff, The Columbia Law Students Guild, (hereinafter "the Student Guild") is a non-profit unincorporated

association of law students which shares with the National Lawyers Guild with which it is affiliated such common purposes as:

> "To promote reform in the law; (and) to facilitate the administration of justice . . . to aid in making the United States and the state constitutions, the law and the administrative and judicial agencies of government responsive to the will of the American people; to protect and foster our democratic institutions and the civil rights and liberties of all the people . . ."

The Student Guild has a membership of over 70 students at the Columbia University Law School. Many of these students reside in the First and Second Judicial Departments and have either applied or intend to apply for membership in the New York Bar in said Departments.

The Student Guild actively seeks to involve its members and other law students in the work of civil rights, civil liberties and poverty organizations and attorneys throughout the country. The Student Guild's efforts can succeed only if law students may freely engage themselves through membership in the Student Guild or otherwise in this work while in and before entry to law school, uninhibited by the fear of subsequent delay or denial of admission to practice because of affiliation with the Student Guild or other organizations or individuals. This being the case, the Student Guild and its members have a direct interest in judicial administration, particularly as it relates to the process for admission to the Bar of this Court, which incorporates the procedures, rules, regulations and practices set forth for admission to the Bar of the State of New York (Rule 3, General Rules, United States District Court for the Southern District of New York, see *infra*, paragraph 14) challenged as being unconstitutional on grounds hereinafter specified in paragraphs 15 through 19.

As specifically related to its members, the Student Guild sues on behalf of those who are or will be applying for admission to the Bar of the State of New York in either the First or Second Judicial Departments and whose exercise of the rights of speech and association is or may be threatened, deterred and restricted by their fears of being refused or delayed admission to the New York Bar because of their political activities while in or before entry to law school and the consequent delay in their admission to and exercise of their right to practice before the Bar of this Court.

7b. Plaintiff, New York City Chapter of National Lawyers Guild (hereinafter "City Chapter") is a non-profit membership corporation, organized under the laws of the State of New York. Plaintiff's office is located at 5 Beekman Street, New York City, New York. Its principal objects include those of the National Lawyers Guild referred to above, *infra*, paragraph 7a.

Plaintiff's membership includes attorneys licensed to practice in New York or elsewhere and residing in New York, and law students from the various law schools in and around New York City.

Plaintiff adheres to the statement of policy adopted by the National Lawyers Guild at the national convention in Santa Monica, California, in July, 1968 (annexed hereto and made a part of this complaint as Exhibit "C"), which places particular emphasis on the concern of lawyers with the war in Vietnam, the draft, racism, and the crises of poverty and the urban ghettos. The plaintiff seeks solutions to these problems through a radical change in the structure of the nation's legal, political and economic system. In this effort, plaintiff and its members have engaged and will engage in many activities not traditionally undertaken by other bar associations.

The work of the plaintiff can succeed only if law students and young attorneys may freely participate through membership in the City Chapter and otherwise to accomplish the needed legal, political, and economic changes, uninhibited by the fear of subsequent delay or denial of admission to practice because of affiliation with the City Chapter or involvement in activities of City Chapter and other organizations and individuals. The City Chapter on its own behalf and on behalf of its members, therefore, asserts a direct interest in judicial administration, particularly as it relates to the process of admission to the New York Bar and to the Bar of this Court, which incorporates the procedures, rules, regulations and practices set forth for admission to the Bar of the State of New York (Rule 3, General Rules, United States District Court for the Southern District of New York, see *infra*, paragraph 14) challenged as being unconstitutional on grounds hereinafter specified in paragraphs 15 through 19.

8. Under the New York Judiciary Law §90(1) the Appellate Divisions of the New York Supreme Court have the sole power to admit to practice applicants to the New York State Bar residing in their respective jurisdictions.

9. It is the rule and practice of the Appellate Divisions for the First and Second Judicial Departments that every application for admission shall be referred to the respective Committee on Character and Fitness, which is under a duty to report back to the Appellate Division its findings as to the character and qualifications of the applicant, and that "no person shall be admitted to practice on such an application until after the Committee on Character and Fitness shall have made its report." (Pt. 3, Rule I, Rules of the Appellate Division, First Department)

10. The Supreme Court, Appellate Division, and the Committee on Character and Fitness for the First Judicial

Department and the Justices or Members thereof have their principal offices in the Borough of Manhattan, New York City. The Supreme Court, Appellate Division, and the Committee on Character and Fitness for the Second Judicial Department and the Justices or Members thereof have their principal offices in the Borough of Brooklyn, New York City.

11. The Committees are charged, under Rule 9401 of the New York Civil Practice Law and Rules (hereinafter CPLR) with the duty of "investigating the character and fitness of every applicant for admission to practice as an attorney and counselor at law in the courts of this state." The Committees are further authorized under CPLR Rule 9404 to prescribe and thereafter, as may become necessary, to amend, subject to the approval of the Justices of the Appellate Division a "Questionnaire and Statement" on which the applicant must set forth all the information and data requested. (Copies of the "Questionnaire and Statement" which the plaintiffs, STEPHEN MARTIN WEXLER, H. GABRIEL KAIMOWITZ, and ROBERT M. COVER are presently required to fill out are respectively appended to and made a part of this complaint as Exhibit "D" and "E".)

12. It is the rule and practice of the Committees that no application for admission will be considered or processed unless the "Questionnaire and Statement" is completely filled out and that failure to answer any question results in long delay or denial of admission to the Bar.

13. CPLR Rule 9406 provides in pertinent part:

> "No person shall receive said certificate from any committee and no person shall be admitted to practice as an attorney and counselor at law in the courts, unless he shall furnish satisfactory proof to the effect:
>
> "1. that he believes in the form of government of the United States and is loyal to such government".

14. Rule 3, General Rules, United States District Court for the Southern District provides in relevant part that no person shall be admitted to the Bar or this Court unless he has been "[a] member in good standing of the Bar of the State of New York, who has been such for at least one year."

15. (a) CPLR §§9401, *et seq.* Judiciary Law §90 and Rule VIII, Rules of the Court of Appeals for the Admission of Attorneys and Counselors-at-Law (Judiciary Law, Appendix) lack sufficient standards and are illegal and void in violation of the First, Fifth, Ninth and Fourteenth Amendments to the Constitution.

(b) CPLR §9406(1) is illegal and void in violation of the First, Fifth, Ninth and Fourteenth Amendments to the Constitution in that:

1. It improperly requires an applicant to the bar of the State of New York to bear an unlimited and indefinite burden of proof of his belief in and loyalty to the form of government of the United States;

2. Its terms are unreasonably vague and uncertain providing no ascertainable standards;

3. It improperly makes belief in the form of government of the United States a condition to admission to the bar; and

4. Belief in the form of government of the United States is not reasonably related to the legitimate objectives of the State, namely the determination that applicants to the bar "possess the character and fitness requisite for an attorney and counselor-at law" [New York Judiciary Law, §90(1)(a)].

(c) Questions 20 and 21(a) of Exhibit "D" and Questions 32 and 36 of Exhibit "E" are illegal, void and in

violation of the First and Fourteenth Amendments to the Constitution in that:

1. they are over-broad and without reasonable limitation;

2. they compel disclosure of political beliefs, associations, speech and activities protected by the First Amendment, and make such associations, speech and activities a factor to be considered in determining admission to the bar; and

3. they compel disclosure of religious activities, beliefs and associations and make such activities, beliefs and associations a factor to be considered in determining admission to the bar.

(d) Questions 22(A) and B and 23 of Exhibit "D" and Question 35 of Exhibit "E" are illegal, void and in violation of the First and Fourteenth Amendments to the Constitution, in that:

1. they are over-broad and without reasonable limitation;

2. they compel disclosure of political beliefs, associations, and activities protected by the First and Fourteenth Amendments; and make such beliefs, associations and activities a factor to be considered in determining admission to the Bar;

3. they compel disclosure of political activities, beliefs and associations without prior establishment of a proper evidentiary foundation for the inquiry;

4. the list of "subversive" organizations compiled by the Attorney General of the United States was formulated and adopted in violation of the First, Fifth and Fourteenth Amendments.

(e) The oaths prescribed in paragraphs "24(A) and (B)" of Exhibit "D" and paragraphs 33 and 34 of Exhibit "E" are illegal and void in that:

1. they are vague and ambiguous in violation of the First and Fourteenth Amendments;

2. the oaths and the essay required by paragraph 24(A) of Exhibit D and paragraph 33 of Exhibit E compel unlimited disclosure of beliefs, associations and activities in violation of the First and Fourteenth Amendments.

(f) The oaths prescribed and disclosures compelled by paragraph 38 of Exhibit "D" and paragraphs 30 and 39 of Exhibit "E" are illegal and void in that they are over-broad, unlimited and indiscriminate in violation of the First, Fifth and Fourteenth Amendments.

16. (a) It is the practice of the defendant Committees to conduct personal interviews of the applicant. These interviews have customarily involved inquiry by Committee members into an applicant's political activities, speeches and beliefs and other conduct of a personal and private nature; the basis for the inquiry often being a subjective reaction by the Committee member to an applicant's answer on the "Questionnaire and Statement" concerning speech, associations and beliefs protected by the First Amendment.

The personal interview conducted by the Committee is an unlimited and indiscriminate invasion of the privacy of an applicant's personal and political beliefs, associations and activities in violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments.

(b) It is the practice of the defendant Committees require an applicant to obtain and submit affidavits of "character and home life" (forms for these affidavits which the

plaintiffs, STEPHEN MARTIN WEXLER and H. GABRIEL KAIMOWITZ, were required to submit are appended hereto and made a part of this complaint as Exhibits "F" and "G" respectively) which constitute an unlimited and indiscriminate invasion of the applicant's personal privacy in violation of the Fourth, Fifth, Ninth and Fourteenth Amendments.

17. All of the foregoing statutes, rules, regulations and practices have the effect of deterring and inhibiting the exercise of rights of speech, association and belief guaranteed by the First Amendment.

18. All of the foregoing statutes, rules, regulations and practices violate the Sixth and Fourteenth Amendment rights guaranteeing the effective assistance of counsel and the independence of the Bar.

19. The admission procedures as set out in statutes, rules and regulations and as put into practice by the defendants do not comply with due process of law guaranteed by the Fourteenth Amendment to the Constitution in that they permit denial or delay of admission to the Bar without providing for notice of charges, a full hearing at which counsel may be present, an opportunity for confrontation and cross-examination and specification of findings underlying the decision of the Committee and Court.

20. The plaintiffs have suffered and continue to suffer immediate serious and irreparable injury by reason of the operation and enforcement of the aforesaid state statutes for which there is no adequate remedy at law, in that the applicants and the members of the Student Guild and the City Chapter are and have been deterred, inhibited and restricted in the exercise of their political and other civil rights and if required to comply with the admission process, the applicants and the members of

the Student Guild and the City Chapter will be forced to choose between sacrificing and forfeiting their constitutionally protected rights to political and personal privacy, and delay or refusal in admission to the Bar of the State of New York and the Bar of this Court.

21. Unless this Court restrains the operations and enforcement of the unconstitutional state statutes, rules, regulations and practices, plaintiffs will continue to suffer the immediate, serious and irreparable injury above set forth.

22. No prior application has been made for the relief requested herein.

WHEREFORE, plaintiffs pray for the following relief:

1. That pursuant to 28 U.S.C. §§2281 and 2284, a three-judge Federal District Court be immediately convened to hear and determine this proceeding;

2. That a judgment issue declaring that Judiciary Law §90, CPLR §§9401, 9404, 9406, Rule VIII, Rules of the Court of Appeals for the Admission of Attorneys and Counselors-at-Law [Judiciary Law Appendix], and regulations and practices of the defendant Courts and committees as written and applied are illegal and void as violative of the Constitution of the United States; and

3. That a permanent injunction issue

(a) restraining the defendants from enforcing or operating under and pursuant to Judiciary Law §90, CPLR §§9401, 9404 and 9406 and Rule VIII, Rules of the Court of Appeals for the Admission of Attorneys and Counselors-at-Law [Judiciary Law, Appendix] and continuing the practices and procedures hereinbefore complained of;

(b) restraining the defendants from conditioning the issuance of a certificate of admission to the Bar of the State of

New York on the applicant's answering questions on the "Questionnaire and Statement", in the personal interview or in any other form or at any other time pertaining to their associations, speech, beliefs and activities protected by the First Amendment to the Constitution and to their personal conduct, the privacy of which is guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth Amendments; and

(c) mandating the issuance by the defendants of a certificate of admission to the Bar of the State of New York to the plaintiffs, STEPHEN MARTIN WEXLER, H. GABRIEL KAIMOWITZ, and ROBERT M. COVER.

RABINOWITZ, BOUDIN & STANDARD
By
Leonard B. Boudin
Attorneys for Plaintiffs
Office & P.O. Address:
30 East 42nd Street
New York, New York 10017

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State of New York

State Board of Law Examiners

Duplicate
No. A-47235

47/48
Amended Complaint: Exhibit A

To the APPELLATE DIVISION *of the* SUPREME COURT *of the State of New York for the*

FIRST *Judicial Department:—*

The State Board of Law Examiners *hereby certifies to the above-mentioned Appellate Division that*

STEPHEN MARTIN WEXLER *of* NEW YORK CITY

has, in accordance with the law and the rules of the Court of Appeals, qualified for examination by said Board for admission to practice as an Attorney and Counselor at Law in the Courts of Record of this State, and has taken and passed such examination.

Given at *Albany, New York, this* 26TH
day of OCTOBER *19* 68

John T. DeGraff

Chairman

Secretary

OF NEW

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of the State of New York for the

FIRST *Judicial Department:—*

The State Board of Law Examiners *hereby certifies to the above-mentioned Appellate Division that*

STEPHEN MARTIN WEXLER *of* NEW YORK CITY

has, in accordance with the law and the rules of the Court of Appeals, qualified for examination by said Board for admission to practice as an Attorney and Counselor at Law in the Courts of Record of this State, and has taken and passed such examination.

Given at *Albany, New York, this* 26TH *day of* OCTOBER *19* 68

STATE OF NEW YORK ★ BOARD OF LAW EXAMINERS ★

John T. DeGraff

Stanley H. Fuld

Arthur Kaufman

State Board of Law Examiners.

By Elizabeth L Connors
Clerk of the Board

State of New York

State Board of Law Examiners

No. A 48332

To the APPELLATE DIVISION *of the* SUPREME COURT *of the State of New York for the*

SECOND *Judicial Department:—*

The State Board of Law Examiners *hereby certifies to the above-mentioned Appellate Division that*

H. GABRIEL KAIMOWITZ *of* BROOKLYN

has, in accordance with the law and the rules of the Court of Appeals, qualified for examination by said Board for admission to practice as an Attorney and Counselor at Law in the Courts of Record of this State, and has taken and passed such examination.

Given at *Albany, New York, this* 14TH *day of* MAY *19* 68

John T. DeGraff

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SECOND *Judicial Department:—*

The State Board of Law Examiners *hereby certifies to the above-mentioned Appellate Division that*

H. GABRIEL KAIMOWITZ *of* BROOKLYN

has, in accordance with the law and the rules of the Court of Appeals, qualified for examination by said Board for admission to practice as an Attorney and Counselor at Law in the Courts of Record of this State, and has taken and passed such examination.

Given at *Albany, New York, this* 14TH *day of* MAY *19* 68

STATE OF NEW YORK BOARD OF LAW EXAMINERS

John T. DeGraff

Chauncey G. Parker

Arthur Kargen

State Board of Law Examiners.

By Elizabeth L. Connor
Clerk of the Board

PRESIDENT's POLICY STATEMENT ADOPTED AT THE NATIONAL CONVENTION OF THE NATIONAL LAWYER'S GUILD SAN FRANCISCO, CALIFORNIA, JULY, 1968

The National Lawyers Guild is a bar association, but one which faces squarely the need for radical change in the structure of our political and economic system. Recognizing the fact that the legal system under which we live is the creation of our society, we seek to change that society so that it will more adequately meet the needs of its people. The Guild must adopt a program which responds to this need and must devise forms of organization and activity which can effectively carry that program forward. Many activities which have become traditional in bar associations are frequently not sufficient in time of crisis and while they are still useful, they must be supplemented by new methods to meet new challenges.

Thus, legislative activity, the publication of articles for the profession and the laymen, exchange of information between lawyers, the holding of conferences and joint action with other bar associations are all valuable methods of work but they do not fully respond to the occasion nor do they exhaust our responsibilities as a bar association whose program addresses itself to a radical solution of the problems which are tearing our nation apart.

Other groups in our society – the black ghetto dwellers, the students, the dispossessed – are moving in ways which seem best to them to compel the restructuring of a society which is no longer acceptable to them. In this group, there are many law students and young lawyers who are deeply involved in this movement and whose continued involvement ought to be of great concern to us. If we are to make any contribution to this movement, it must be to use our professional skills to advance it. This, of course, means the development of our skills in the court room, but more than that, it means the utilization and development of our skills in the large arena of activity outside the court room – in the analysis of political and legal problems, in the development of legal doctrine to support radical activities and in the exercise of our professional skills wherever legal

issues may be relevant. Such activity may not only call for a new style of operation, but also requires a deep involvement by Guild lawyers in the political aspects of the problems we consider, and not merely in their legal aspects.

Form A (350-1-68) 94

9-

DEAD-LINE FOR SUBMISSION _____

Applicant's Office Telephone.....

Applicant's Home Telephone.....

ISSUED FEB 1 1968

SUBMITTED MAR 1 1968

53/54 Amended Complaint: Exhibit D

Appellate Division, Supreme Court
First Judicial Department
Committee on Character and Fitness
of
Applicants for Admission to the Bar

QUESTIONNAIRE AND STATEMENT OF APPLICANT

The Committee will not approve incomplete, defective, or carelessly prepared papers.

The answers to the following questions must be in BLACK INK. (Typewriter & Ball Point included)

Applicant must answer fully, truthfully and accurately ALL questions and inquiries and EACH subdivision thereof. Any omissions or inaccuracies may be deemed ground for disapproval and rejection of the application.

Ability to express full and responsive answers will be considered an element in the determination of fitness.

If the space for any answer is insufficient, the applicant may complete the answer on a rider, specifying the number of the question to which it relates.

Where YES or NO suffices, employ that form in answers.

All statements made on information and belief must be so designated and the sources of information must be given. Answers on information and belief will be accepted only in connection with matters which the applicant cannot be expected to know personally or remember because of youth or other reason.

1. Give the following information:

(a) .....
Name in full.

(b) .....
Was name ever changed or have you used any other name?

(c) .....
If name was changed or any other name used, give date, facts and reasons therefor. If changed by Court Order file copy of petition, certified copy of order and certificate of compliance.

(d) .....
Age date of birth place of birth

(e) .....
Present residence with whom living

(f) .....
Length of actual residence in the State of N. Y.

(g) .....
Are you married or single? If married, when, where and to whom?

(h) .....
Have you ever been divorced or separated? If so, give details and file copies of Pleadings, of Judgments and Agreements in any legal action in connection therewith.

(i) .....
Are you naturalized? If so, give the date when and place where. (Produce Certificate of Naturalization.)

2. State **exact address** of every residence you have had in the United States or elsewhere, and the **month and year** of the beginning and ending of each such residence.

Permanent Residences

Month and Year	Street and number	City or town	County or borough, and state

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Ability to express full and responsive answers will be considered an element in the determination of fitness.

If the space for any answer is insufficient, the applicant may complete the answer on a rider, specifying the number of the question to which it relates.

Where YES or NO suffices, employ that form in answers.

All statements made on information and belief must be so designated and the sources of information must be given. Answers on information and belief will be accepted only in connection with matters which the applicant cannot be expected to know personally or remember because of youth or other reason.

1. Give the following information:

(a) .....
Name in full.

(b) .....
Was name ever changed or have you used any other name?

(c) .....
If name was changed or any other name used, give date, facts and reasons therefor. If changed by Court Order file copy of petition, certified copy of order and certificate of compliance.

(d) .....
Age date of birth place of birth

(e) .....
Present residence with whom living

(f) .....
Length of actual residence in the State of N. Y.

(g) .....
Are you married or single? If married, when, where and to whom?

(h) .....
Have you ever been divorced or separated? If so, give details and file copies of Pleadings, of Judgments and Agreements in any legal action in connection therewith.

(i) .....
Are you naturalized? If so, give the date when and place where. (Produce Certificate of Naturalization.)

2. State **exact address** of every residence you have had in the United States or elsewhere, and the **month and year** of the beginning and ending of each such residence.

Permanent Residences

Month and Year	Street and number	City or town	County or borough, and state

Temporary Residences

3. Give the following information relating to your parents:

	Father	Mother
(a) Name in full.		
(b) Birth place.		
(c) Whether living or not.		
(d) Residence.		
(e)		

*Present or past occupation.

*"Merchant" or "Manufacturer" is not a sufficient answer as to occupation.

4. List **all schools** below college grade attended, giving **month and year** of the beginning and ending of attendance at each.

Name or designation of school	City, town or country	State	Month and year

Date of Graduation from High School.....

5. List **college or colleges** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason. State what sessions you attended, whether full or part time, day, evening, extension, or summer attendance.

Name or designation of college	City, town or country	State	Degree	Sessions	Month and year

6. If you did not receive a college degree before entering law school give date of filing Law Students Qualifying Certificate.....

7. List **law schools** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason. State what sessions you attended, whether full or part time, day, evening, extension, or summer attendance.

Name or designation of school	City, town or country	State	Degree	Sessions	Month and year

8. (A) Have you ever been denied admission to any school, college, law school, or other similar institution? .....If your answer be yes, state the facts.

.....

.....

(B) Have you ever been reprimanded, censured, suspended, dropped or otherwise disciplined by any school, college, law school or other similar institution for scholastic reason.....for misconduct..... If your answer is yes, attach rider giving a detailed statement of the facts and the disposition of the matter.

9. List chronologically all employments other than employments in law office, including part time and summer employments.

File letter from each employer giving nature of employment, period of service, whether satisfactory, and

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5. List **college or colleges** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason. State what sessions you attended, whether full or part time, day, evening, extension, or summer attendance.

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(B) Have you ever been reprimanded, censured, suspended, dropped or otherwise disciplined by any school, college, law school or other similar institution for scholastic reason.....for misconduct..... If your answer is yes, attach rider giving a detailed statement of the facts and the disposition of the matter.

9. List chronologically all employments other than employments in law office, including part time and summer employments.

File letter from each employer giving nature of employment, period of service, whether satisfactory, and reason for termination.

Name and address of employer	Dates of period of service	Position	Reason for termination

10. Have you ever been discharged by any employer?..... If so, state the cause and the circumstances.

.....

.....

11. Have you ever been engaged on your own account in any occupation, business, or profession?..... If so, give in detail the nature and location thereof and the **month and year** of the beginning and ending of your engagement in or connection therewith. If any such business was carried on by you in partnership with others, give the names and addresses of all partners and the nature of the business. If the business was carried on by a corporation in which you owned an interest list its name, address, natu :: of the business and your connection with it.

.....

.....

12. State all law offices with which you have been or are now connected, with address of each, nature of your connection and services, and the **month and year** of the beginning and ending thereof. Include the law department of any corporation.

.....

.....

13. How many times have you taken the New York State Bar examination? .....

14. Have you ever heretofore applied for admission to the bar of the State of New York in the First Judicial Department or any other Judicial Department?..... If so, state where, when, and with what result.

.....

.....

15. Have you ever taken the bar examination or applied for admission to practice as an attorney or counselor-at-law in any state other than the State of New York or in any other country?..... If so, give name of state or country and state specifically the result of the examination and the disposition made of the application. If granted, state whether you were admitted, giving the name of the court by which admitted, the date and place of such admission, the periods of practice and all the office addresses where you have practiced. (If admitted elsewhere file Certificate of Admission and of good standing of each Court including Federal Courts to which you have been separately admitted.)

.....

.....

16. (A) Have you ever been reprimanded, censured, disciplined, suspended, or disbarred as an attorney or counselor-at-law, or have any charges or complaints ever been preferred against you?..... If so, state the nature of the charges in full detail and the final disposition.....

(B) Has your conduct ever been called in question with reference to the unauthorized practice of law.....

(C) Have you ever been employed or otherwise connected with any person, firm, or corporation whose conduct was called in question on the subject of unauthorized practice of law while you were so employed or connected?.....

If your answer is yes as to any part of this question, state the matter fully.....

.....

.....

17. (A) State whether you have

(1) been a party to or otherwise included in any action or legal proceeding, either civil or criminal;.....

(2) testified or been called as a witness in any action or legal proceeding, either civil or criminal;.....

(3) been charged with crime, or arrested;.....

(4) been summoned for a violation of any law or corporate ordinance or traffic regulation;.....

(5) been requested to appear before any prosecuting officer or investigative agency or unit in any matter.....

If your answer be yes to any subdivision of this question, state the facts, and, if a party, the judgment or other disposition, naming the court and date in each case.

.....

.....

.....

(B) Have you ever asserted as a matter of right any claim or demand against any person, partnership or corporation?..... If so, give full details and disposition of the claim or demand.

.....

.....

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13. How many times have you taken the New York State Bar examination? .....

14. Have you ever heretofore applied for admission to the bar of the State of New York in the First Judicial Department or any other Judicial Department?..... If so, state where, when, and with what result.

15. Have you ever taken the bar examination or applied for admission to practice as an attorney or counselor-at-law in any state other than the State of New York or in any other country?..... If so, give name of state or country and state specifically the result of the examination and the disposition made of the application. If granted, state whether you were admitted, giving the name of the court by which admitted, the date and place of such admission, the periods of practice and all the office addresses where you have practiced. (If admitted elsewhere file Certificate of Admission and of good standing of each Court including Federal Courts to which you have been separately admitted.)

16. (A) Have you ever been reprimanded, censured, disciplined, suspended, or disbarred as an attorney or counselor-at-law, or have any charges or complaints ever been preferred against you?..... If so, state the nature of the charges in full detail and the final disposition.....

(B) Has your conduct ever been called in question with reference to the unauthorized practice of law.....

(C) Have you ever been employed or otherwise connected with any person, firm, or corporation whose conduct was called in question on the subject of unauthorized practice of law while you were so employed or connected?.....

If your answer is yes as to any part of this question, state the matter fully.....

17. (A) State whether you have

(1) been a party to or otherwise included in any action or legal proceeding, either civil or criminal;.....

(2) testified or been called as a witness in any action or legal proceeding, either civil or criminal;.....

(3) been charged with crime, or arrested;.....

(4) been summoned for a violation of any law or corporate ordinance or traffic regulation;.....

(5) been requested to appear before any prosecuting officer or investigative agency or unit in any matter.....

If your answer be yes to any subdivision of this question, state the facts, and, if a party, the judgment or other disposition, naming the court and date in each case.

(B) Have you ever asserted as a matter of right any claim or demand against any person, partnership or corporation?..... If so, give full details and disposition of the claim or demand.

(C) Has any claim or demand ever been asserted as a matter of right against you?..... If so, give full details and disposition of the claim or demand.

18. Are you indebted to anyone for money borrowed or advanced?..... Are there any judgments outstanding against you?..... (a) In either case give names of creditors, amounts, dates, nature of indebtedness and how payable; (b) If judgment obtained against you has been satisfied, attach certificate of satisfaction; (c) Are you in default in the discharge of any indebtedness?..... If so, give reason.

19. (A) Are there any favorable or unfavorable incidents in your life, whether at school, college, law school, business, or otherwise, not called for by the questions contained in this questionnaire or disclosed in your answers thereto?.....

If so, list them. .....

.....

.....

(B) If you engaged in extracurricular activities (athletic, dramatic, debating, fraternity, club, committee, administration, etc.) in college, indicate approximate amount of time spent and responsibility involved.

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20. Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or social services?..... If so, state fully.

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21. (A) Give the names, addresses, objects of and period of membership in each and every club, association, society or organization of which you are or have been a member.

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.....

(B) Have you ever been denied admission to or been disciplined, expelled or suspended from any club, association, society or organization or has your application for membership in any club, association, society or organization not been acted upon or withdrawn by you?.....

If your answer be yes, state the facts.

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22. (A) Are you now or have you ever been a member of or affiliated in any way with any of the organizations or groups listed as subversive by the Attorney General of the United States?.....

(B) Have you paid dues to, contributed in any way or signed a petition for any such organization or group?.....

If your answer is yes to either subdivision of this question, give the following information:

Name and address of organization or group.....

.....

.....

When you became a member or affiliated with it. .....

.....

Period of your association or connection with it. .....

How and why you became associated or connected with it. .....

.....

.....

.....

How and why you severed your connection with it, if you did. .....

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23. Have you ever participated in any way whatsoever in the activities of such organizations or groups?.....

.....

If so, to what extent. .....

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society or organization of which you are or have been a member.

(B) Have you ever been denied admission to or been disciplined, expelled or suspended from any club, association, society or organization or has your application for membership in any club, association, society or organization not been acted upon or withdrawn by you?.....

If your answer be yes, state the facts.

22. (A) Are you now or have you ever been a member of or affiliated in any way with any of the organizations or groups listed as subversive by the Attorney General of the United States?.....

(B) Have you paid dues to, contributed in any way or signed a petition for any such organization or group?.....

If your answer is yes to either subdivision of this question, give the following information:

Name and address of organization or group.....

When you became a member or affiliated with it. .....

Period of your association or connection with it. .....

How and why you became associated or connected with it. .....

How and why you severed your connection with it, if you did. .....

23. Have you ever participated in any way whatsoever in the activities of such organizations or groups?.....

If so, to what extent. .....

24. (A) Do you believe in the principles underlying the form of government of the United States?..... State on a rider, in not less than 100 words, what you believe those principles to be. (Handwritten)

(B) Can you conscientiously and do you affirm that you are, without any mental reservation, loyal to the Government of the United States?.....

25. Are you registered for Selective Service?..... If so, give Local Board No. and address

..... Classification..... Date.....

If requested, will you give written authorization for an examination of your Selective Service file?.....

26. Have you ever served on active duty in the Armed Forces of the United States?.....

Branch.....Dates of period of service.....Type of Discharge.....

Basis for Discharge.....

File photostat

27. Have you ever filed an application with the Federal, State or Municipal Civil Service Commissions for employment?.....

If so, state when and where and with whom application was filed, the position for which it was filed and the result. .....

.....

.....

28. (A) Have you read the Canons of Ethics adopted by the American and New York State Bar Associations?.....

(B) Do you unconditionally subscribe to the same?.....

(C) Will you conscientiously endeavor to conform your professional conduct to them?.....

29. (A) Have you ever held a license the procurement of which required proof of good character?..... If so, as to each such license, state the date it was granted and the name and address of the authority granting it.

.....

.....

(B) If your application for such a license was not granted state the facts.

.....

.....

(C) Have you ever held a bonded position?..... If so, specify the nature of position, dates, amount of bond, and whether or not anyone ever sought to recover on your bond or cancelled the same?

.....

.....

(D) List every application presented or examination taken by you other than such as are herein elsewhere disclosed, for a position or license, the procurement of which required proof of good character. (Specify all examinations whether or not you were successful. Specify every application presented including applications for reinstatement and withdrawn applications and whether or not they were granted). State as to each application the date, the name and address of the authority to whom it was addressed and the disposition made of it, with the reasons therefor, and as to each examination, the result thereof.

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.....

30. (A) If admitted, do you intend to practice law?.....

(B) If you do not intend to practice law state why.

.....

.....

Signature of applicant.....

(Must conform to name on Certificate of State Board of Law Examiners)

STATE OF
COUNTY OF } ss.:

I, ..., being duly sworn, say: I have read the foregoing questions and have fully, truthfully and accurately answered the same. The foregoing answers are true of my own knowledge, except if stated to be made upon information and belief, and as to such answers, I believe them to be true.

Signature of applicant.....

(Sign as above)

Subscribed and sworn to before me this day of , 19 .

FORM 1. 6-25-67 1250 SETS (685-74)

Office Telephone .....

Home Telephone .....

COMMITTEES ON CHARACTER AND FITNESS

SECOND JUDICIAL DEPARTMENT

APPLICATION FOR ADMISSION TO THE BAR AND STATEMENT REQUIRED PURSUANT TO ARTICLE 9A OF THE CIVIL PRACTICE LAW AND RULES

DIRECTIONS

(Read all these directions carefully before attempting to answer any question.)

1. This is a statement made under oath. Applicant's failure fully and accurately to disclose any fact or information called for by any question may result in the denial of the application for admission, or if applicant shall have been admitted before the discovery thereof, in the revocation of his license to practice law.

2. *Unless otherwise indicated, every question and every part of each question must be answered, even though the answer be negative.*

3. If the applicant cannot comply with any of the requirements, he must state in detail the efforts he has made to comply and why he cannot. Answers on information and belief will be accepted only in connection with matters which the applicant cannot be expected to remember because of extreme youth or other equally sufficient reason. All statements made on information and belief must be so designated in the *sworn statement, and the sources of information must be given.*

4. If the space left for any answer is insufficient, the applicant shall complete his answer on a sheet or sheets attached to this *sworn statement.* Avoid attaching sheets, however, whenever possible.

5. In stating addresses give street and number, if any, city, village or township, and state or country. If an address is in New York City, give the borough *in addition* to the city. *If present address of applicant be in a village, give also the township and county.*

6. In giving a period which is continuing at the date of verification of this sworn statement, always give such period as continuing "to date."

Answers must be in applicant's handwriting — not printing

To the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department:

The undersigned hereby applies for admission to practise as an attorney and counselor-at-law in all courts of the State of New York, and in support of such application submits the following sworn statement and the accompanying affidavits and other papers:

1. (a) State full name ..... (First) (Middle) (Last)

(b) Have you ever used or been known by any other name? ..... If so, state in full each name (other than the name above given) which you have used or by which you have at any time been known, and the reasons for each such name.

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PURSUANT TO ARTICLE 94 OF THE CIVIL PRACTICE LAW AND RULES

DIRECTIONS

(Read all these directions carefully before attempting to answer any question.)

1. This is a statement made under oath. Applicant's failure fully and accurately to disclose any fact or information called for by any question may result in the denial of the application for admission, or if applicant shall have been admitted before the discovery thereof, in the revocation of his license to practice law.

2. *Unless otherwise indicated, every question and every part of each question must be answered, even though the answer be negative.*

3. If the applicant cannot comply with any of the requirements, he must state in detail the efforts he has made to comply and why he cannot. Answers on information and belief will be accepted only in connection with matters which the applicant cannot be expected to remember because of extreme youth or other equally sufficient reason. All statements made on information and belief must be so designated in the *sworn statement, and the sources of information must be given.*

4. If the space left for any answer is insufficient, the applicant shall complete his answer on a sheet or sheets attached to this *sworn statement.* Avoid attaching sheets, however, whenever possible.

5. In stating addresses give street and number, if any, city, village or township, and state or country. If an address is in New York City, give the borough *in addition* to the city. *If present address of applicant be in a village, give also the township and county.*

6. In giving a period which is continuing at the date of verification of this sworn statement, always give such period as continuing "to date."

Answers must be in applicant's handwriting — not printing

To the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department:

The undersigned hereby applies for admission to practise as an attorney and counselor-at-law in all courts of the State of New York, and in support of such application submits the following sworn statement and the accompanying affidavits and other papers:

1. (a) State full name ..... (First) (Middle) (Last)

(b) Have you ever used or been known by any other name? ..... If so, state in full each name (other than the name above given) which you have used or by which you have at any time been known, and the reasons for each such name.

(c) If your name has ever been changed, state former name and when, how and why, change was made. If change was made by court order annex a certified copy thereof, and certificate of compliance therewith.

2. State age in years as of last preceding birthday.

3. (a) State residence (giving all details specified in paragraph 5 of above directions).

   (b) Mailing address (including zip code number).

4. State date and place of birth (giving date and borough, if any, city or town and state or country).

5. (a) State whether you are married or single.

   (b) If you are married, give the date of marriage and full name of spouse and any other name by which said spouse has been known.

   (c) If you are married, do you live with your husband or wife? If you are not living with your husband or wife, give reasons for living apart.

   (d) Except as above stated, have you ever been married? If your answer be "yes" when, where and with whom was each such marriage contracted and when, how and why was the marital status terminated?

   (e) State present name and address of former spouse.

6. Name and identify the persons with whom you reside, (permanently and/or temporarily) enumerating all members of family, or if not residing with family, then of household.

4. State date and place of birth (giving date and borough, if any, city or town and state or country).

5. (a) State whether you are married or single.

(b) If you are married, give the date of marriage and full name of spouse and any other name by which said spouse has been known.

(c) If you are married, do you live with your husband or wife? If you are not living with your husband or wife, give reasons for living apart.

(d) Except as above stated, have you ever been married? If your answer be "yes" when, where and with whom was each such marriage contracted and when, how and why was the marital status terminated?

(e) State present name and address of former spouse.

6. Name and identify the persons with whom you reside, (permanently and/or temporarily) enumerating all members of family, or if not residing with family, then of household.

7. Are you a citizen of the United States of America? By birth? By naturalization?

If you became a citizen by naturalization, give date and place of naturalization, with petition and certificate numbers, and submit original naturalization certificate, which will eventually be returned to you. If there is a variance between the name appearing on your birth certificate or certificate of naturalization and the name used in this application, explain the reason for the variance.

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8. State every residence you have ever had, in the United States or elsewhere, with exact address of each, and the month and year of the beginning and ending of each such residence.

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county (If in New York City, also give Borough)	State or Country
	Permanent Residences (List same chronologically. *Temporary residences*, which are residences *away from home* for educational, business or other special purposes, are to be listed on next page. *Do not interrupt the continuity of the periods of permanent residence by subtracting periods of temporary residence.*)		
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(Continue permanent residences if necessary, and give temporary residences on next page.)

(Permanent Residences Continued)

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county (If in New York City, also give Borough)	State or Country
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Temporary Residences

(These include only residences *away from home* for educational, business or other special purposes. Do not interrupt continuity of periods of permanent residence, to be given above, *by subtracting periods* of temporary residence.)

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9. State facts indicated below regarding each parent and any step-parent or foster parent.

Full names including Mother's Maiden Name	Residence (or in case of decease last residence).	Place of Birth	Occupation (or most recent occupation).	Living? (If deceased give date.)

10. State *all* elementary and high schools ever attended.

Name or Designation	City or Town (If in New York City, also give Borough.)	State or Country	Month and Year of Beginning and Ending of Period or Periods of Attendance, indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance

11. State *all* colleges and professional schools (other than law schools) ever attended. *If you did not receive a degree from any such institution, state that fact and give the reason in the additional space below.*

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

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10. State *all* elementary and high schools ever attended.

Name or Designation	City or Town (If in New York City, also give Borough.)	State or Country	Month and Year of Beginning and Ending of Period or Periods of Attendance, indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance

11. State *all* colleges and professional schools (other than law schools) ever attended. *If you did not receive a degree from any such institution, state that fact and give the reason in the additional space below.*

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

12. State *all* law schools ever attended. *If you did not receive a degree from any law school, state that fact and give the reason in the additional space below.*

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

13. State if you ever attended any other schools of any kind or pursued any course of studies, in addition to those hereinabove mentioned.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

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13. State if you ever attended any other schools of any kind or pursued any course of studies, in addition to those hereinabove mentioned.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

14. Have you ever been placed on probation, or dropped, or suspended or expelled from, or have you withdrawn from or left any institution of learning, *or otherwise been subjected to discipline, by any such institution,* or requested or advised for any reason to discontinue your studies therein temporarily or otherwise?

If your answer be yes, give the name of any such institution and state the cause, circumstances and date of each such occurrence.

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15. At the time of World War II were you within the ages covered by the Selective Service law then in force? If so, give the following information:

(a) State original classification and each reclassification, if any.

(b) Set forth branch, nature and dates of active service in the armed forces, if any.

(c) Give reason for each discharge or release, and submit photostat copy of each discharge or release.

16. (a) Have you registered under the U. S. Selective Service Act of 1948? If you have registered, give the location and number of the local draft board.

(b) State your original classification and each reclassification, if any.

(c) If your classification or reclassification is other than 1A, give the reason therefor.

(d) Since the passage of the 1948 Act have you been inducted into, or have you enlisted or been commissioned in, any of the armed services of the United States? If the answer shall be "Inducted," "Enlisted" or "Commissioned," specify the service. Give dates of induction, enlistment, commission and active duty.

(e) If you have been inducted or have enlisted or been commissioned, have you been honorably discharged or released? If your answer be "Yes," give date and reason, stating facts fully, and submit a photostat copy of each discharge or release certificate.

17. Have you ever been rejected for service in or discharged or released from for reasons other than honorable by any of the armed services of the United States or of any other country? If your answer be "Yes," give date and reason, stating facts fully, whether the reason be physical, mental, moral or otherwise and submit photostat copy of any documentary proof thereof.

18. Have you at any time or in any manner, except as set forth under questions 15, 16 and 17 applied to be admitted into any of the armed services of the United States, including reserves? If the answer be "Yes," state (a) when, where, which service and with what result; (b) period and nature of service rendered; (c) if discharged give date and nature of discharge and submit photostat copy of discharge certificate; (d) if rejected give reason stating facts fully, and submit photostat copy of documentary proof, if any.

(a)

(b)

(c)

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(c) Give reason for each discharge or release, and submit photostat copy of each discharge or release.

16. (a) Have you registered under the U. S. Selective Service Act of 1948?
If you have registered, give the location and number of the local draft board.

(b) State your original classification and each reclassification, if any.

(c) If your classification or reclassification is other than 1A, give the reason therefor.

(d) Since the passage of the 1948 Act have you been inducted into, or have you enlisted or been commissioned in, any of the armed services of the United States?
If the answer shall be "Inducted," "Enlisted" or "Commissioned," specify the service. Give dates of induction, enlistment, commission and active duty.

(e) If you have been inducted or have enlisted or been commissioned, have you been honorably discharged or released? If your answer be "Yes," give date and reason, stating facts fully, and submit a photostat copy of each discharge or release certificate.

17. Have you ever been rejected for service in or discharged or released from for reasons other than honorable by any of the armed services of the United States or of any other country? If your answer be "Yes," give date and reason, stating facts fully, whether the reason be physical, mental, moral or otherwise and submit photostat copy of any documentary proof thereof.

18. Have you at any time or in any manner, except as set forth under questions 15, 16 and 17 applied to be admitted into any of the armed services of the United States, including reserves? If the answer be "Yes," state (a) when, where, which service and with what result; (b) period and nature of service rendered; (c) if discharged give date and nature of discharge and submit photostat copy of discharge certificate; (d) if rejected give reason stating facts fully, and submit photostat copy of documentary proof, if any.

(a)

(b)

(c)

(d)

19. Have you served in the armed forces (reserves or otherwise) of any country other than the United States of America? If the answer is yes, give name of country, inclusive dates of service, and reason for separation from service. (Submit photostat of discharge or release.)

20. Have you ever been engaged on your own account alone or with others in any business or profession or any other occupation whatsoever? If so, state under what name and give in detail the nature thereof, the month and year of the beginning and ending of your connection therewith, and all business or professional addresses. Any such business or profession carried on by you alone or with others, or in partnership and any incorporated business carried on by you either alone or with others, should be here listed, with names and addresses of all partners or associates. If any business or profession has been discontinued, or if your connection therewith has ceased, state why, and whether or not there are unpaid debts or claims or pending litigation. Give hours of beginning and ending of daily period devoted by you to each business, profession or occupation. The answer to this question need not give information required under question 27.

21. Have you ever been employed in or associated with any law office, law department or legal institution? If so, enumerate *all* such employments and associations in chronological order. Include employments by members of family or other relatives and employments without monetary compensation.

Month and Year of Beginning and Ending of Period of Employment	Hours of Beginning and Ending	Name of Employer (Individual, partnership or corporation. Do not give name of an agent of employer.)	Address of Employer (Give street, number, city or town and state or country.)	Nature of Employer's Business	Position or Positions held by Applicant	Reason for Termination

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21. Have you ever been employed in or associated with any law office, law department or legal institution? If so, enumerate *all* such employments and associations in chronological order. Include employments by members of family or other relatives and employments without monetary compensation.

Month and Year of Beginning and Ending of Period of Employment	Hours of Beginning and Ending of Daily Period	Name of Employer (Individual, partnership or corporation. Do not give name of an agent of employer.)	Address of Employer (Give street, number, city or town and state or country.)	Nature of Employer's Business	Position or Positions held by Applicant	Reason for Termination

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22. Have you ever been employed in any business or profession or any other occupation whatsoever, other than the law? If so, enumerate *all* such employments in chronological order. Include employments by members of family or other relatives and employments without monetary compensation.

Month and Year of Beginning and Ending of Period of Employment	Hours of Beginning and Ending of Daily Period	Name of Employer (Individual, partnership or corporation. Do not give name of an agent of employer.)	Address of Employer (Give street, number, city or town and state or country.)	Nature of Employer's Business	Position or Positions held by Applicant	Reason for Termination
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Amended Complaint: Exhibit E 67/68

23. (a) Give each period during which you have been unemployed or without occupation since you were sixteen years old, including summer vacations from school, college or law school, with reason for being unemployed or without occupation during each such period.

(b) Explain any overlapping of periods appearing from answers to questions 10, 11, 12, 13, 20, 21 and 22, *supra*, either severally or in connection with other answers.

24. Have you ever been discharged, or has your service ever been terminated, by any employer?
If so, give the name of each such employer and attach your affidavit stating date, cause and circumstances in detail.

25. Do you affirmatively represent that, in connection with all your employments for which no proof has been supplied, your services were satisfactory and that you were not discharged nor were your services terminated for cause, nor were you requested or advised to resign from or leave any such position?

If answer is no, give full details as to each such incident.

26. Have you ever applied for admission to the Bar of the State of New York?
If so, where, when, and with what result?

27. (a) Have you ever registered as a law student, or applied to take or taken the bar examination in any country, state or jurisdiction other than the State of New York?
If so, state when, where, and with what result.

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ployer?
If so, give the name of each such employer and attach your affidavit stating date, cause and circumstances in detail.

25. Do you affirmatively represent that, in connection with all your employments for which no proof has been supplied, your services were satisfactory and that you were not discharged nor were your services terminated for cause, nor were you requested or advised to resign from or leave any such position?

If answer is no, give full details as to each such incident.

26. Have you ever applied for admission to the Bar of the State of New York?
If so, where, when, and with what result?

27. (a) Have you ever registered as a law student, or applied to take or taken the bar examination in any country, state or jurisdiction other than the State of New York?
If so, state when, where, and with what result.

(b) Have you applied for admission to practise as an attorney or counselor in any country, state or jurisdiction other than the State of New York? If so, state specifically the disposition made of the application; if admitted, give the name and address of each court by which admitted, the date of such admission, the periods of practise and all the office addresses where you have practised, with the names and addresses of partners, if any. (Applicants admitted in other jurisdictions must submit proof from each Grievance Committee, or body entertaining complaints against lawyers, in each County or District in which the applicant has practiced, certifying as to whether charges have been filed with such Committee or body against the applicant, and, if so, the substance of the charges and the disposition thereof. Instruction Sheet D may be obtained from Committee Office.)

(c) Have any charges ever been preferred against you as an attorney or counselor-at-law? If so, attach your affidavit stating in detail the circumstances.

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28. State whether you have ever

(Answer each subdivision of this question "Yes" or "No.")

(a) testified or been called as a witness in any action, proceeding or investigation to which you were not a party;

(b) been ticketed, or summoned, or arrested, or taken into custody, or indicted, or convicted, or tried for, or charged with, or pleaded guilty to the violation of any law, ordinance, traffic or parking regulation or the commission of any felony, or misdemeanor, or been requested to appear before any prosecuting or investigative agency in any matter?
(Indicate all such incidents, including proceedings as a juvenile offender, no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court, it nevertheless must be disclosed in the answer to this question.)

(c) failed to answer on the return date any ticket, summons or other legal process served upon you at any time? If so, was any warrant, subpoena, or further process issued against you as a result of your failure to respond to such legal process?

(d) as a member of any armed forces, been the subject of any charges or complaints, formal or informal, or have any proceedings been instituted against you, or have you been a defendant in any courts martial or been disciplined?

(e) been declared a ward of any court, or adjudged an incompetent, or have any proceedings been brought to have you declared a ward of any court or adjudged an incompetent, or have you been committed to any institution or been a patient in any institution for the care of persons suffering from mental or nervous disorders or drug addiction or alcoholism?

(f) been charged with fraud or any other matter involving moral turpitude?

(g) been a party to or otherwise involved in any action or proceeding, or investigation either civil or criminal, not covered by answers to the foregoing subdivisions of this question?

If your answer be YES to any subdivision of this question, state the facts in detail and give in each case name and locality of court or agency, dates of beginning and termination of action or proceeding, and the judgment or other disposition below.

29. (a) Are there any unsatisfied judgments against you? If so, list the same giving name and address of judgment creditor and the court by which judgment was rendered, together with the date and amount thereof and the nature of the claim on which it was based.

(b) Are you in default in the performance or discharge of any duty or obligation imposed upon you by any governmental agency or decree or order of any court including alimony and support orders and decrees?
If so, state the facts.

(c) Are you indebted to anyone? If so, list all debts stating name and address of creditor and amount, date, nature and status of indebtedness.

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(b) Are you in default in the performance or discharge of any duty or obligation imposed upon you by any governmental agency or decree or order of any court including alimony and support orders and decrees?
If so, state the facts.

(c) Are you indebted to anyone? If so, list all debts stating name and address of creditor and amount, date, nature and status of indebtedness.

(d) Has any one ever asserted a claim or demand against you, which has not been made the subject of any action or legal proceeding? If so, state the facts and the present status of the matter.

(e) Have you ever asserted any claim or demand against any person, partnership or corporation, or governmental agency which has not been made the subject of any action or legal proceeding?
If so, state the facts and the present status of the matter.

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30. Have you ever

(An applicant for admission on motion is to construe this question as not covering activities in any jurisdiction in which he has been admitted to practise law.)

(a) tried any action or proceeding?

(b) argued any motion?

(c) drawn legal papers or given legal advice?

(This does not apply to the drawing of papers for, or reporting on questions of law to, an attorney under whose supervision applicant has served as a law clerk.)

(d) held yourself out to be an attorney or counselor-at-law?

If the answer to any of the above questions be yes, state the facts.

31. (a) Have you submitted with this application for admission to the Bar a character affidavit from each person to whom you referred in any application to enter any law school, or whose recommendation was submitted to any law school which you attended? If not, state fully your reasons therefor.

(b) Has any of such persons any information detrimental to your character or fitness? If yes, state the facts.

32. Have you written any articles for publication? If so, give the circumstances, the name of publication, the date of publication and the title and subject matter of the article. (Include information relative to any articles for publication in any school or college paper or magazine.)

33. Do you believe in the principles underlying the form of government of the United States? Briefly state the reasons for your answer.

34. Do you conscientiously affirm (without any mental reservation) that you are loyal to the Government of the United States of America?

35. (a) Are you pledged now or have you ever been pledged to aid in effecting changes in our form of government by force or violence or any other unlawful means?

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34. Do you conscientiously affirm (without any mental reservation) that you are loyal to the Government of the United States of America?

35. (a) Are you pledged now or have you ever been pledged to aid in effecting changes in our form of government by force or violence or any other unlawful means?

(b) Are you now or have you ever been a member of any party or organization created for such purpose or for the propagandizing or the furtherance thereof?

(c) If answer is yes, state the name of the party or organization.

(d) Are you now, or have you ever been, a member of the Communist Party, or have you ever been enrolled as a member of the Communist Party?

THIS SPACE RESERVED FOR BINDING

36. (a) Are you now, or have you ever been at any time (including the time during which you attended high school, college and law school, and including the time during which you engaged in military service or any community activity) a member of any club, association, society or organization or political party?

(b) If answer be yes, give the name, address and objects of each and every such club, association, society or organization or party and state the period of your membership and your position or title therein.

15

37. Is there *any* incident in your life not called for by the foregoing questions which has any detrimental bearing on your character or fitness? If the answer be yes, state the facts.

38. (a) Have you read the Canons of Ethics adopted by the American Bar Association and the New York State Bar Association?

(b) Do you unconditionally subscribe to the same?

(c) Will you conscientiously endeavor to conform your professional conduct to them?

I understand that this application is a *continuing application* and must give correctly the information herein sought as of the date of my appearance before the Appellate Division to be sworn in as an attorney and counselor-at-law. I will, therefore, before such appearance, notify the Secretary to the Committees as to any change

(a) In my residence;

(b) In my employment;

(c) In respect of any other matter regarding which information is herein sought.

In case of any such change I will file such further affidavits or papers as may be required.

Signature of Applicant .....

STATE OF NEW YORK
COUNTY OF
(Insert name of County)
} ss.:

I, ..., being duly sworn, say: I have read the foregoing questions and have completely and frankly answered the same in my handwriting. The foregoing answers are true of my own knowledge, except where stated to be made upon information and belief, and as to such answers, I believe them to be true.

Signature of Applicant .....

Sworn to before me this day of

19

Form F (700-1-68) 94

Appellate Division, Supreme Court
First Judicial Department
Committee on Character and Fitness
of
Applicants for Admission to the Bar

INSTRUCTIONS FOR PERSONS FURNISHING SPONSORING AFFIDAVITS

ATTORNEYS AND OTHERS WHO MAKE AFFIDAVITS IN SUPPORT OF APPLICATIONS FOR ADMISSION TO THE BAR WILL GREATLY FACILITATE THE WORK OF THE COMMITTEE AND THEREBY EXPEDITE ACTION UPON SUCH APPLICATIONS BY COMPLYING STRICTLY WITH THE FOLLOWING REQUIREMENTS IN THE ORDER GIVEN BELOW.

Points to be covered in drawing affidavits of character

1. Proper heading. (See back hereof for Form.)
2. Name of affiant.
3. Residence address of affiant.
4. Nature of affiant's business. (If affiant be a practicing attorney, he should state that he is a practicing attorney of the Supreme Court of the State of New York and give the year of his admission to the Bar and the Judicial Department in which he was admitted; and if known to a Committee member the name of the member to whom he is known.)
5. Business address of affiant.
6. Length and nature of affiant's acquaintance with applicant.
7. Affidavits must state *that to the knowledge (or in the opinion) of the affiant the applicant is a person of good moral character.*
8. Set forth in detail the facts upon which affiant's knowledge of or opinion as to applicant's moral character is based. If, for example, applicant has been employed by affiant or under his supervision, the period of employment with the month and year of the beginning and ending thereof, the nature of the position or positions held, services rendered by applicant and the reason for leaving employment must be stated and what, if any, personal contact affiant has had with applicant. If the acquaintance between affiant and applicant is of a social nature, the facts of social contact must be stated, as, for example, that affiant has been a visitor in the applicant's home and is acquainted with his parents or other members of his family, or that affiant has been associated with applicant and nature and extent of such association. Affidavits covering home life should characterize family and home environment.
9. Affiant must have read the VERIFIED original questionnaire and answers of applicant (and riders, if any) and state such fact and that to the best of his knowledge and belief the several answers of applicant are truthful and accurate. Affiant also must state verification date as it appears on the questionnaire.

The foregoing instructions are intended to supplement the instruction sheet, and are to be given by applicants to those persons of whom they request affidavits. Additional copies, if needed, may be had upon application at the Committee's office, 51 Madison Avenue, New York City.

LOWELL WADMOND, *Chairman*—14 Wall Street
FELIX A. MULDOON, *Vice-Chairman*—111 Broadway
EDWIN L. WEISL—120 Broadway
MARK F. HUGHES—1 Chase Manhattan Plaza
BRUCE BROMLEY—1 Chase Manhattan Plaza
MONROE GOLDWATER—60 East 42 Street
ARTHUR H. SCHWARTZ—19 East 70 Street
[illegible] 535 Fifth Avenue

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INSTRUCTIONS FOR PERSONS FURNISHING SPONSORING AFFIDAVITS

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2. Name of affiant.
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5. Business address of affiant.
6. Length and nature of affiant's acquaintance with applicant.
7. Affidavits must state *that to the knowledge (or in the opinion) of the affiant the applicant is a person of good moral character.*
8. Set forth in detail the facts upon which affiant's knowledge of or opinion as to applicant's moral character is based. If, for example, applicant has been employed by affiant or under his supervision, the period of employment with the month and year of the beginning and ending thereof, the nature of the position or positions held, services rendered by applicant and the reason for leaving employment must be stated and what, if any, personal contact affiant has had with applicant. If the acquaintance between affiant and applicant is of a social nature, the facts of social contact must be stated, as, for example, that affiant has been a visitor in the applicant's home and is acquainted with his parents or other members of his family, or that affiant has been associated with applicant and nature and extent of such association. Affidavits covering home life should characterize family and home environment.
9. Affiant must have read the VERIFIED original questionnaire and answers of applicant (and riders, if any) and state such fact and that to the best of his knowledge and belief the several answers of applicant are truthful and accurate. Affiant also must state verification date as it appears on the questionnaire.

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ARTHUR H. SCHWARTZ—19 East 70 Street
BERNARD TRENCHER—535 Fifth Avenue
THOMAS B. DYETT—401 Broadway
ALFRED A. GIARDINO—21 West Street

COMMITTEE ON CHARACTER AND FITNESS, FIRST JUDICIAL DEPARTMENT
Office of Committee, 51 Madison Avenue, New York, N. Y. 10010
THEODORE R. FRESCHI, *Secretary*
Telephone 683 { 7746 / 7747 }

(SAMPLE ONLY)

(not to be submitted)

Supreme Court of the State of New York

APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

In the Matter of the Application

of

.....

For Admission to the Bar

STATE OF
COUNTY OF } ss.:

.....being duly sworn deposes and says;

(BODY OF AFFIDAVIT)

.....
(Signature)

Sworn to before me this.....

day of ....., 19.....

(DO NOT FORGET TO HAVE ALL AFFIDAVITS NOTARIZED)

(NOTE: No back shall be put on Affidavits)

NEW YORK SUPREME COURT, APPELLATE DIVISION.
SECOND DEPARTMENT

Form for Affidavit of Character and Home Life

IN THE MATTER OF THE APPLICATION

of

(Insert name of applicant)

for Admission to Practise as an Attorney and Counsellor-at-Law.

NOTICE

All persons who make affidavits on this form are requested to read all the questions before answering any of them, so that the several answers may be responsive to the questions respectively.

The answers to all questions are to be written, preferably in typewriting, by or under the direction of the affiant.

It is desired that both the subject matter and the language of each answer shall be supplied by the affiant and not by the applicant.

Nothing not personally known to affiant should be stated.

STATE OF
} ss.:
COUNTY OF

, the affiant, being duly sworn, deposes

(Name of Affiant)

and says that the answers to the following questions have been written by or under the direction of affiant, and that both questions and answers have been carefully read by affiant and that the several answers are true of affiant's own knowledge, except those stated to have been made on information and belief, and those stated to give the opinion or belief of affiant, and as to those answers, affiant believes them to be true.

1. Name of affiant?

2. Residence address? (Give full address, including street and number, borough, if any, and city, or village and/or township, as circumstances may require, and county, state and country.)

3. Nature of business? (If a lawyer, state whether or not you are a *practising attorney* of the Supreme Court of the State of New York, and/or an attorney of any court or courts in any other state, country or jurisdiction, specifying each such state, country or jurisdiction, and give place of admission to the Bar, and approximate date of such admission.)

4. Business address?

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Exhibit G

IN THE MATTER OF THE APPLICATION

of

(Insert name of applicant)

for Admission to Practise as an Attorney and Counsellor-at-Law.

All persons who make affidavits on this form are requested to read all the questions before answering any of them, so that the several answers may be responsive to the questions respectively.

The answers to all questions are to be written, preferably in typewriting, by or under the direction of the affiant.

It is desired that both the subject matter and the language of each answer shall be supplied by the affiant and not by the applicant.

Nothing not personally known to affiant should be stated.

STATE OF
} ss.:
COUNTY OF

, the affiant, being duly sworn, deposes
(Name of Affiant)

and says that the answers to the following questions have been written by or under the direction of affiant, and that both questions and answers have been carefully read by affiant and that the several answers are true of affiant's own knowledge, except those stated to have been made on information and belief, and those stated to give the opinion or belief of affiant, and as to those answers, affiant believes them to be true.

1. Name of affiant?

2. Residence address? (Give full address, including street and number, borough, if any, and city, or village and/or township, as circumstances may require, and county, state and country.)

3. Nature of business? (If a lawyer, state whether or not you are a *practising attorney* of the Supreme Court of the State of New York, and/or an attorney of any court or courts in any other state, country or jurisdiction, specifying each such state, country or jurisdiction, and give place of admission to the Bar, and approximate date of such admission.)

4. Business address?

5. How long have you known the applicant personally?

6. Are you related to applicant by blood or marriage, or is there any business, professional or similar relationship between you and the applicant or his family?

7. Describe briefly your associations with the applicant, setting forth how such associations began, and indicate in what activities (business, scholastic, cultural, recreational, athletic, social or otherwise) you have participated with applicant. It is not a sufficient answer merely to repeat the above words in parentheses, but the *particular activities* should be specified.

8. How often during each week, month or year, or other division of time, have you come in contact with applicant during the entire period of acquaintance or designated parts thereof? ("Frequently" or "often" or other indefinite statement is not a satisfactory answer.)

9. What is your conclusion as to applicant's *moral* character? (Reserve details for next question.)

10. Set forth in **detail** what you have *personally observed* in your associations with applicant which leads you to the conclusion set forth under question 9, specifying, among other things, the **moral** qualities and personal traits observed in applicant's conduct, and his usual attitude toward those with whom he associates.

11. Have you visited applicant's
    (a) parental home;
    (b) marital home, if any;
    (c) any other home or place of abode applicant may have had?

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8. How often during each week, month or year, or other division of time, have you come in contact with applicant during the entire period of acquaintance or designated parts thereof? ("Frequently" or "often" or other indefinite statement is not a satisfactory answer.)

9. What is your conclusion as to applicant's *moral* character? (Reserve details for next question.)

10. Set forth in **detail** what you have *personally observed* in your associations with applicant which leads you to the conclusion set forth under question 9, specifying, among other things, the **moral** qualities and personal traits observed in applicant's conduct, and his usual attitude toward those with whom he associates.

11. Have you visited applicant's
    (a) parental home;
    (b) marital home, if any;
    (c) any other home or place of abode applicant may have had?

(Answer "Yes" or "No" to each subdivision.)

(If affiant's answer to each subdivision of the foregoing question be "No," questions 12 to 16, inclusive, should not be answered. If the answer be "Yes," to any subdivision, then questions 12 to 16, inclusive, should be answered, giving the details required by each question with respect to the home or homes with which affiant is familiar.)

12. (a) How often, approximately, during each week, month or year, have you visited the parental, marital or other home or place of abode of applicant?

("Frequently" or "often" or other indefinite statement is not a satisfactory answer. Note that in most cases visits will be less frequent than the contacts mentioned in Q. 8, above.)

(b) During what years (stating approximate dates)?

(c) At what addresses (listing them specifically)?

(d) Do such visits still continue? If not, when did they cease, and for what reason?

DO NOT WRITE IN THIS SPACE

DO NOT WRITE IN THIS SPACE

13. Have you on such visits met and conversed with:

(a) Applicant;

(b) The members of his family or household? If not with all, with which members?

14. (a) With what persons has the applicant lived during each period of your association with him in his home? (If during period or periods covered by answer, applicant has lived with family, enumerate the members of the family during each period. If, during any period of association, he has lived apart from his family, enumerate the persons, if any, with whom he has lived during each such period.)

(b) With what persons does he live at the present time, if that be known to you?

15. Set forth in **detail** what you have *personally observed* as to the **moral** qualities and conduct of the members of applicant's **family** or other persons with whom he has lived:

(a) in parental home;

(b) in marital home, if any;

(c) in any other home or place of abode applicant may have had.

16. What do you say of applicant's conduct toward the members of his family or household during each period of your association with him in his home, and at present, if association still continues?
(Give full details.)

17. State fully any other facts within your knowledge, or of which you have information, which in your opinion have any bearing on the applicant's moral character or fitness to practise law, or which would be helpful to the Committee in determining the applicant's character and fitness.

(Insert date) Sworn to before me this

day of 19

.....
(Affiant to sign here)

.....
(Attesting officer to sign here)

.....
(Official designation)

(If affidavit is sworn to outside the State of New York, attach clerk's certificate)

Notice of Motion for Three-Judge Court

UNITED STATES DISTRICT COURT
Southern District of New York
[68 Civ. 2917]

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., *et al.*,

Plaintiffs,

—against—

LOWELL WADMOND, *et al.*,

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

PLEASE TAKE NOTICE, that the undersigned will move this Court at a Motion Term thereof to be held on July , 1968 at 10:00 A.M. in Room 506 of the United States Courthouse, Foley Square, New York, New York for an order convening a three judge District Court to hear and determine this proceeding.

New York, New York
July , 1968

JEREMIAH S. GUTMAN
363 Seventh Avenue
New York, New York 10001
Telephone: 244 6670

ALAN H. LEVINE
c/o New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010
Telephone: WA 9 6076

Motion for Three-Judge Court

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917]

The plaintiffs by their undersigned attorneys move that a three judge court be convened to hear and determine this action pursuant to 28 U.S.C. § § 2281 and 2284.

JEREMIAH S. GUTMAN
363 Seventh Avenue
New York, N. Y. 10001
Telephone: 244 6670

ALAN H. LEVINE
c/o New York Civil Liberties Union
156 Fifth Avenue
New York, N.Y. 10010
Telephone: WA 9 6076

Motion for Preliminary and Permanent Injunction

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917]

Upon the annexed complaint and motion in the above-entitled action and the annexed complaint and motion in *Stephen Martin Wexler, et al. vs. The Supreme Court of the State of New York,* Index No. 68 Civ 2938, for the convening of a three judge court and for the issuance of a declaratory judgment and preliminary and permanent injunction, and upon the affidavit of ALAN H. LEVINE, one of the attorneys for the plaintiffs in the above-entitled action, it appearing that both of the actions involve common questions of law and fact within the meaning of Rule 42(a) of the Federal Rules of Civil Procedure, it is

ORDERED, that the defendants show cause at Room , United States Courthouse, Foley Square, New York, New York on the day of August, 1968 at m. in the noon of that day or as soon thereafter as counsel can be heard why an order should not be made consolidating the above-entitled actions, and it is further

ORDERED, that personal service of a copy of this Order and of the papers upon which the same is granted on the Honorable Louis J. Lefkowitz, the attorney for the defendants in both of the above-entitled actions on or before August 23, 1968 shall be sufficient service of this ORDER.

Dated: New York, N. Y.
August , 1968

United States District Judge

Affidavit of Alan H. Levine in Support of Motion for Preliminary and Permanent Injunction

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917]

ALAN H. LEVINE, being duly sworn, deposes and says:

1. I am one of the attorneys for the plaintiffs in the above-entitled action and respectfully submit this affidavit in support of an order to show cause for consolidation of the complaints and motions in the above-entitled action with those in *Wexler, et al. vs. The Supreme Court, et al.* which are presently pending before this Court.

2. This application is made pursuant to Rule 42(a), F.R.C.P., upon the ground that both actions involve common issues of law and fact, and that a joint hearing upon the motions and complaints in question will avoid unnecessary loss of time and needless cost and delay.

3. Both of these actions seek a declaration that under the Constitution of the United States, and in particular the First, Fifth, Sixth, Ninth and Fourteenth Amendments thereto, the statutory scheme described in the annexed complaints for admission to the Bar in the First Judicial Department of the Appellate Division of the New York Supreme Court is unconstitutional on its face and as applied. Both actions also seek to enjoin the defendants from violating the plaintiffs' constitutional rights through the unlawful administration of this scheme.

4. An examination of the complaints in these actions clearly shows that the issues of law and fact in both cases are similar if not identical. Further, inasmuch as similar relief is

prayed for in both complaints, inconsistent disposition of the two actions would be contrary to sound judicial administration.

5. It is respectfully submitted, therefore, that the issues of law and fact in these two actions are substantially the same and that it would be in the interest of economy, expedition and substantial justice to have the respective motions for a three judge court and complaints consolidated for hearing.

6. The reason that this motion is being brought on by order to show cause is that there is insufficient time to seek the relief prayed for herein by notice of motion.

7. No prior application for the relief prayed for herein has been made.

Sworn to before me this
23rd day of August, 1968

/s/ Alan H. Levine

**Motion for Three-Judge Court,
Preliminary Injunction, and Summary Judgment**

UNITED STATES DISTRICT COURT
Southern District of New York

[68 Civ. 2938]

STEPHEN MARTIN WEXLER, *et al.*,

Plaintiffs,

—against—

THE SUPREME COURT OF THE STATE OF NEW YORK, Appellate Division, First Judicial Department, *et al.*,

Defendants.

PLEASE TAKE NOTICE that upon the complaint herein, the affidavit of Jonathan Lubell, sworn to the 9th day of August, 1968, and the annexed statement pursuant to Rule 9(g) of the General Rules of this Court, the undersigned will move this Court at a Motion Part thereof, to be held in Room 506, United States Courthouse, Foley Square, New York, New York, on the 20th day of August, 1968 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for (i) an order convening a three-judge court in conformity with 28 U.S.C. §§ 2281 and 2284, (ii) an order granting plaintiffs summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law, (iii) an order granting plaintiffs a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and (iv) an order directing the defendants to appear for oral examination with respect to the issues in this case, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, and directing the defendants, pursuant to Rule 34 of

the Federal Rules of Civil Procedure, to produce and permit the inspection and copying of all relevant rules, regulations, instructions, policy statements, reports, questionnaires, transcripts of hearings and investigations and summaries thereof, relating to the admission of attorneys, pursuant to Judiciary Law, Section 90 CPLR §§ 9401, 9404, 9406, VIII, Rules of the Court of Appeals for the admission of attorneys and counsellors-at-law (Judiciary Law Appendix) and the implementing regulations of the defendants.

Dated: New York, New York
August 9, 1968

RABINOWITZ, BOUDIN & STANDARD
Attorneys for the Plaintiffs
30 East 42nd Street
New York, New York 10017

TO: HON. LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for the Defendants
80 Center Street
New York, New York

Affidavit of Jonathan Lubell in Support of Motion for Three-Judge Court

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2938]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JONATHAN LUBELL, being duly sworn, deposes and says:

I am President of the New York City Chapter of the National Lawyers Guild, one of the plaintiffs in this action. I am a member of the bar of the State of New York. I have read the allegations of the complaint herein and incorporate the said allegations by reference in this affidavit.

The plaintiffs in this action seek an injunction against the enforcement of Judicial Law, § 90, CPLR §§ 9401, 9404 and 9406, and various implementing rules and regulations on the ground that they are illegal and void as violative of the Constitution of the United States. The substantiality of these federal constitutional issues in a case, which applies to admission to the bar the principles established by the United States Supreme Court in multifarious other areas of life, is obvious. Since the plaintiffs seek an injunction against the enforcement of these state laws, it is necessary that an order be made convening a three-judge court in conformity with 28 U.S.C. §§ 2281 and 2284.

The plaintiffs also seek an order granting summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there is no material issue as to the

material facts which are set forth in the complaint and in the statement filed by the plaintiffs, pursuant to Rule 9(g) of the General Rules of this Court. The complaint alleges, with supporting facts, that the State laws here involved are unconstitutional both on their face and as applied by the defendants.

Upon information and belief, the defendants have for many years implemented the State statutes involved by a variety of means which violate the First Amendment rights to association, assembly, belief and privacy and the right to due process of applicants for admission to the Bar. Their techniques have included the following:

(a) the use of reports and information received from or through Congressional Committees, the Attorney General of the United States, the Federal Bureau of Investigation and other governmental and quasi-governmental organizations.

(b) reliance upon lists of so-called subversive organizations compiled by the Attorney General, by Congressional Committee and by other governmental and non-governmental agencies.

(c) the examinations of applicants (without formal charges, evidence or counsel in so-called interviews or hearings, sometimes stenographically recorded, sometimes not, in which the defendant Committees inquire into the lawful political associations or constitutionally protected beliefs of applicants even to the point recently of inquiry as to the applicants' opposition to the Government's policy in Vietnam and the reasons for the applicants' participation in marches for peace and similar constitutionally protected activities.

(d) delaying or denying admission to the Bar of persons raising constitutional objections to such interrogations or of persons whose political opinions are deemed "radical" or otherwise disapproved of by Committee members.

It is therefore necessary and material to the issues in this case that the depositions of the defendants be taken and that there be a discovery, inspection and copying of their records relating to the matters set forth in the complaint due in this affidavit. Such discovery should include (i) requests for information concerning applicants made by the Committee, (ii) the responses thereto, (iii) the questionnaires of persons whose admission was delayed, denied or subject to further scrutiny, (iv) the interrogations of those persons, (v) the reports made by the Committee with respect to such persons. The plaintiffs agree of course that subject to further application to and order of the Court the names, addresses and other means of identifying the applicants should not be disclosed to the plaintiffs' counsel and that other appropriate conditions may be imposed so that their use is limited to this proceeding. Since a three-judge court is unlikely to convene immediately because of the summer vacation period and because the defendants have not yet filed an answer, the taking of depositions as to discovery and inspection can be directed by a single judge and will assist rather than interfere with the consideration of the substantive issues by the three-judge court. In view of the scope of the examinations, it is respectfully submitted that it be directed to be held immediately.

The plaintiffs finally seek an order granting them a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining the defendants from enforcing and implementing the statutes under review in this case. The

existence of these statutes has an inhibitory effect upon the political activities and the associations of the individual plaintiff and upon those of the members of the plaintiff organizations.

If the motion for summary judgment is likely to be heard and decided expeditiously in the near future, then the preliminary injunction may not prove necessary. But, on the other hand, if a delay does occur in the determination of the motion for a summary judgment, the plaintiffs should not be deprived of their associational rights and of their right to practice law if the Court agrees that on their face all of the statutes involved are unconstitutional. The Court will note that the individual plaintiffs' rights to practice in the Court is conditioned upon their admission to the State Bar.

Wherefore, it is respectfully prayed that this Court enter an order convening a three-judge court and directing the taking of depositions, discovery and inspection prayed for, and that the motion for a preliminary injunction and for summary judgment be referred to a three-judge federal district court.

JONATHAN LUBELL

Sworn to before me this
day of August, 1968.

DAVID G. LUBELL
NOTARY PUBLIC, State of New York
No. 60-7611865
Qualifed in Westchester County
Commission Expires March 30, 1969

Statement Pursuant to Rule 9(g)

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2938]

STATEMENT UNDER RULE 9(g)

Plaintiffs contend that there is no genuine issue of fact to be tried with respect to the following material facts:

1. Plaintiff Wexler is 24 years of age, a citizen of the United States, and a resident of New York; who was certified on October 26, 1967 as having passed the Bar examinations; Exhibit A to the complaint is an accurate copy of the relevant certificate of the State Board of Examiners.

2. Plaintiff Kaimowitz is 33 years of age, a citizen of the United States, and a resident of New York, who was certified on May 14, 1968 as having passed the Bar examinations, as appears from Exhibit B to the complaint.

3. Plaintiff, The Columbia Law Students Guild, is a non-profit association of law students with a membership of at least 70 at Columbia Law School. Many of its student members reside in the First and Second Judicial Departments and have applied to or intend to apply for membership in the New York Bar in said Departments.

4. Plaintiff, New York City Chapter of National Lawyers Guild, is a non-profit membership corporation organized under the laws of New York. Its membership includes attorneys licensed to practice in New York and law students from the various law schools in New York City intending to practice in the First and Second Judicial Departments.

5. The rule and practice of the defendant Appellate Divisions of the First and Second Judicial Departments is to

refer applications for admission to practice law to the respective Committees on Character and Fitness which then report back to the Appellate Divisions their findings as to the character and qualifications of the applicants.

6. The said Committees are authorized under CPLR, Rule 9404, to prescribe, subject to the approval of the Appellate Divisions, a Questionnaire and Statement which applicants are required to complete, as more particularly [sic]

7. Rule VIII-1, Rules of the Court of Appeals for the Admission of Attorneys and Counsellors-at-Law, N. Y. Judiciary Law appendix, provides that:

> "Every applicant for admission to the Bar must produce before a Committee on Character and Fitness appointed by an Appellate Division of the Supreme Court and file with such Committee evidence that he possesses the good moral character and general fitness requisite for an attorney and counsellor-at-law as provided in Section 90 of the Judiciary Law, which must be shown by the affidavits of two reputable persons residing in the city or county in which he resides, one of whom must be a practicing attorney of the Supreme Court of this State."

8. Rule VIII-4, Rules of the Court of Appeals for the Admission of Attorneys and Counsellors-at-Law, N. Y. Judiciary Law appendix, provides that the justices of the Appellate Divisions shall adopt for their respective Departments "such additional rules for ascertaining the moral and general fitness of applicants as to such justices may seem proper."

9. Section 90 of the N. Y. Judiciary Law provides that the Appellate Divisions shall admit applicants to the Bar "if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law."

Statement Pursuant to Rule 9(g)
68 Civ. 2938

10. CPLR, Rule 9406, provides that no person shall be admitted to practice unless he shall furnish satisfactory proof "that he believes in the form of government of the United States and is loyal to such government."

11. It is the practice of the defendant Committees to conduct personal interviews of the applicant. These interviews have customarily involved inquiry by Committee members into an applicant's political activities, speeches and beliefs and other conduct of a personal and private nature; the basis for the inquiry is often subjective reaction by the Committee member to an applicant's answer on the Questionnaire and Statement concerning the speeches, associations and beliefs of the applicants.

12. It is the practice of the defendant Committees to require an applicant to obtain and submit affidavits of "character and home life" (forms for these affidavits which the plaintiffs, STEPHEN MARTIN WEXLER and H. GABRIEL KAIMOWITZ, were required to submit are appended to the complaint as Exhibits F and G, respectively).

13. The plaintiffs Wexler and Kaimowitz and members of the Student Guild and the city Chapter and others cannot become members of the Bar unless they comply with the procedures and rules imposed by the defendants, as set forth above and in the complaint.

Respectfully submitted,

RABINOWITZ, BOUDIN & STANDARD
Attorneys for the Plaintiffs

Affidavit of Attorney General in Opposition to Motion for Three-Judge Court

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 2938]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL M. COHEN, being duly sworn, deposes and says:

1. He is an Assistant Attorney General of the State of New York and has been assigned to the defense of this suit, in which the Attorney General is appearing specially. The Attorney General denotes his appearance as special because he questions the jurisdiction of this Court over the subject matter of this lawsuit, which relates to the admission of members of the Bar of the State of New York.

2. Members of the bar of the State of New York are officers of the State Courts and those Courts have exclusive jurisdiction over the subject matter of such admission. It is not a function of this Court to determine the eligibility of persons to become members of the State Bar.

3. The procedures devised by the State in testing the character and fitness of applicants for admission may be questioned not only before the Committees-defendants, but also in the State Courts. The defendants, which include New York *appellate* courts, may be presumed to be not only as cognizant of applicable decisions relating to the provisions of the United States Constitution pertinent to admission procedures, but in addition, to be willing as this Court (whether in

the form of a single judgee or a three-judge Court), to assure the individual plaintiffs all the safeguards to which they may be entitled under the Constitution. *Matter of Weiss*, 20 N.Y. 2d 696, 697 (1967); *cf. Theard v. United States*, 354 U.S. 278 (1957), 281.

4. No basis has been shown for granting the equitable relief which is sought by plaintiffs and which is an essential element of any cause of action in which a three-judge Court may be convened. It may not be *assumed* that responsible state judicial officers will, upon the making of specific and appropriate objections to the answering of any questions which the plaintiffs may deem constitutionally objectionable, rule upon such objections, other than in good faith. The evidence is clearly to the contrary. New York Courts respect the United States Constitution and guard constitutional procedures in bar admission cases. *Matter of Weiss*, 20 N.Y. 2d 696, 697 (1967).

5. It would be presumptuous for this Court to assume, therefore, that our New York Courts would not correctly rule upon or protect the constitutional rights which the plaintiffs seek to assert here, without their ever having sought to present those rights specifically and properly before an appropriate state agency or tribunal. Any delay which may result in the processing of the applications of the individual plaintiffs herein may be attributed to their complete failure to file *any* "statement" at all and their apparent refusal to answer *any* of the questions included in the forms of "questionnaire and statement" referred to in the complaint. Since there clearly is not basis for equitable intervention by this Court, not only should this motion be denied but, in addition, the complaint should be dismissed.

Affidavit of Attorney General in Opposition to Motion for Three-Judge Court

WHEREFORE, deponent, reserving all other objections to the sufficiency of this complaint, respectfully requests that plaintiffs' application for the convening of a three-judge Court be denied and that by reason of the patent insufficiency of the complaint, such complaint be dismissed, no substantial federal question having been raised.

/s/ DANIEL M. COHEN

Sworn to before me this
23rd day of August, 1968

MARIA L. MARCUS
Assistant Attorney General
of the State of New York

Answer

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917]

The defendants, appearing specially herein by LOUIS J. LEFKOWITZ, Attorney General of the State of New York, and answering the complaint herein, allege:

FIRST: Deny each and every allegation of paragraphs "1", "2", "8", "10", "11", and "12" of the complaint herein.

SECOND: Deny any knowledge or information sufficient to form a belief as to the allegations of paragraphs "3" and "4" of the complaint and denies the standing of the plaintiff, Law Students Civil Rights Research Council to maintain this action.

THIRD: Deny each and every allegation of paragraph "6" of the complaint except that defendants admit that the Rules of the New York Civil Practice Law and the Rules of the Court of Appeals of the State of New York and New York Judiciary Law, §90, make provision for procedures relating to the admission of the Bar of the State of New York, as do the Rules of the First and Second Judicial Department.

FOURTH: Deny each and every allegation of paragraph "7" of the complaint, except that the defendants admit that the General Rules of the United States District Court for the Southern and Eastern District make provision for admission to the Bar of this Court and of the Eastern District.

FIFTH: Deny each and every allegation of paragraph "9" of the complaint except that defendants admit that prior to the admission of applicants for admission to the Bar of the State of New York, in the First Department, they conduct individual interviews of such applicants.

FOR A FIRST SEPARATE,
DISTINCT AND COMPLETE
DEFENSE TO THIS ACTION,
DEFENDANTS ALLEGE:

SIXTH: This Court lacks jurisdiction over the subject matter of the admission of attorneys to the Bar of the State of New York.

FOR A SECOND SEPARATE,
DISTINCT AND COMPLETE
DEFENSE TO THIS ACTION,
DEFENDANTS ALLEGE:

SEVENTH: The Courts of the State of New York have complete jurisdiction over the admission of applicants to the Bar of the State of New York.

FOR A THIRD SEPARATE,
DISTINCT AND COMPLETE
DEFENSE TO THIS ACTION,
DEFENDENTS ALLEGE:

EIGHTH: Repeats each and every allegation contained in paragraphs "FIRST" to "SEVENTH" hereof, inclusive.

NINTH: There are available by direct review in the New York Courts remedies to review the alleged constitutional procedural infirmities set forth in the complaint, and the decisions of the New York State Courts are, in turn, reviewable by the United States Supreme Court.

TENTH: New York provides all applicants for admission to the Bar with an adequate remedy at law to review both the procedures of and determinations of the defendants and the plaintiffs have not exhausted the remedies so provided to obtain a review of the defendants' procedures.

FOR A FOURTH SEPARATE, DISTINCT AND COMPLETE DEFENSE TO THIS ACTION, DEFENDANTS ALLEGE:

ELEVENTH: That the defendants, the Committees on Character and Fitness of the Supreme Court, First and Second Judicial Departments are the arms of the Judicial Branch of the State Government of the State of New York and are immune from suit in this Court.

Moreover, the relief sought from the Federal Court is excessive, oppressive, and beyond the scope of this Court's powers with regard to the internal operations of the New York judicial system.

WHEREFORE, defendants respectfully pray that the complaint herein be dismissed, with costs.

Dated: New York, New York
August 22, 1968

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for the Defendants,
Appearing Herein Specially
For the Defendants Served
80 Centre Street
New York, New York 10013

Answer

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2938]

The defendants appearing specially herein by LOUIS J. LEFKOWITZ, Attorney General of the State of New York, and answering the complaint herein, allege:

FIRST: Deny each and every allegation of paragraphs "1", "2", "3", "6", "15", "17", "18", "19", "20", and "21", of the complaint herein.

SECOND: Denies any knowledge or information to form a belief as to the allegations of paragraphs "4", "5", "7-A", and "7-B", of the complaint herein and denies the standing of the plaintiffs, Columbia Law Students Guild, and New York City Chapter of National Lawyers Guild to maintain this action.

THIRD: Admits the allegations of paragraphs "8", "9" and "10" of the complaint and admits the allegations of paragraph "11" of the complaint, except that the defendants deny as to the plaintiff Wexler, the parenthetical material set forth in the last sentence of paragraph "11".

FOURTH: Denies the allegations of paragraph "12" of the complaint except that the defendants admit that failure to answer any question set forth in the questionnaire and statement required to be filled out by the Committee on Character and Fitness *may* delay admission or result in the denial of an application for admission to the Bar.

FIFTH: Denies each and every allegation of paragraph "16-A" and "16-B" of the complaint except that the defendants admit that it is the practice of the defendant committees to conduct personal interviews of applicants for admission to the Bar and to require the preparation by applicants of certain forms of questionnaire and statement.

SIXTH: Denies any knowledge or information as to the allegations of paragraph "22" of the complaint herein.

FOR A FIRST SEPARATE,
DISTINCT AND COMPLETE
DEFENSE TO THIS ACTION,
DEFENDANTS FURTHER ALLEGE:

SEVENTH: The Courts of the State of New York have complete jurisdiction over the admission of the individual plaintiffs to the Bar of the State of New York.

FOR A SECOND SEPARATE,
DISTINCT AND COMPLETE
DEFENSE TO THIS ACTION,
DEFENDANTS ALLEGE:

EIGHTH: This court lacks jurisdiction over the subject matter of the admission of attorneys to the Bar of the State of New York.

FOR A THIRD SEPARATE,
DISTINCT AND COMPLETE
DEFENSE TO THIS ACTION,
DEFENDANTS ALLEGE:

NINTH: Repeats each and every allegation contained in paragraph "1" and "8" hereof inclusive.

TENTH: There are available by direct review in the New York Courts remedies to review the alleged constitutional procedural infirmities set forth in the complaint; and the decisions of the New York State Courts are, in turn, reviewable by the United States Supreme Court.

ELEVENTH: New York provides all applicants for admission to the Bar with an adequate remedy at law to review both the procedures of and determinations of the defendants and the plaintiffs have not exhausted the remedies so provided to obtain a review of the defendants' procedures.

FOR A FOURTH SEPARATE,
DISTINCT AND COMPLETE
DEFENSE TO THIS ACTION,
DEFENDANTS ALLEGE:

TWELFTH: That the defendants, the Committees on Character and Fitness of the Supreme Court, First and Second Judicial Departments, are arms of the Judicial Branch of the State Government of the State of New York and are immune from suit in this Court.

FOR A FIFTH SEPARATE,
DISTINCT AND COMPLETE
DEFENSE TO THIS ACTION,
DEFENDANTS ALLEGE:

THIRTEENTH: That all the defendants, in performance of their statutory duties dealing with the admission of attorneys to the Bar of the State of New York, perform a judicial function in the exercise of which they are entitled to judicial immunity from suit. Moreover, the relief sought from the Federal Court is excessive, oppressive, and beyond the scope of this Court's powers with regard to the internal operations of the New York judicial system.

WHEREFORE, defendants respectfully pray that the complaint herein be dismissed, with costs.

Dated: New York, New York
August 22, 1968

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for the Defendants,
Appearing Herein Specially
For the Defendants Served
80 Centre Street
New York, New York 10013

Opinion of Judge Motley

UNITED STATES DISTRICT COURT

S. D. New York

Sept. 25, 1968

Nos. 68 Civ. 2917; 68 Civ. 2938

Law Students Civil Rights Research Council Inc., *et al.*

v.

Wadmond, *et al.*

Stephen Martin Wexler, *et al.*

v.

The Supreme Court of the State of New York, Appellate Division, First Judicial Department, *et al.*

Memorandum Decision and Order for Three Judge Court

Motley, District Judge.

Plaintiffs in these two actions attack the constitutionality of certain New York statutes, rules and regulations relating to the character and fitness of those seeking admission to the New York bar. More specifically, plain-

tiffs claim, inter alia, that rights guaranteed them by the First and Fourteenth Amendments to the Federal Constitution are being violated by defendants' enforcement of the statutory and regulatory provisions under attack. Plaintiffs say that these statutes, rules and regulations are unconstitutional on their face and as applied.

The first statute in question is the New York Judiciary Law, McKinney's Consol. Laws, c. 30, § 90(1). That statute confers upon the Appellate Division of the Supreme Court in each Judicial Department the power to admit applicants to the bar upon the state board of law examiners certifying to it that the applicant has passed the required examination. The statute decrees that the Appellate Division shall admit such person to practice "if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counselor-at-law." The statute also contains the proviso that the applicant shall be admitted to the bar only if he has complied with the rules in all respects of the Court of Appeals of the State and the Appellate Division.

The Appellate Division is directed by statute (New York Civil Practice Law and Rules, Rule 9401) to appoint a committee for each Appellate Division District "for the purpose of investigating the character and fitness of every applicant for admission to practice." Every application for admission by a person who has been certified by the state board of law examiners must be referred to the committee for the district in which such person actually resides. (New York CPLR, Rule 9402). Unless otherwise ordered by the Appellate Division, "no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission." (N.Y.C.P.L.R., Rule 9404). "To enable the committee to make such investigation the committee,

subject to the approval of the justices of the appellate division, is authorized to prescribe and from time to time to amend a form of statement or questionnaire in which they shall set forth * * * all the information and data required by the committee and the appellate division justices." (N.Y. C.P.L.R., Rule 9404). The committee is enjoined by statute from issuing its certificate to any person and the Appellate Division is precluded by the same law from admitting any person to practice, unless such person, inter alia, shall furnish satisfactory proof to the effect "that he believes in the form of the government of the United States and is loyal to such government." (N.Y.C.P.L.R., Rule 9406).

Rule VIII of the Rules of the Court of Appeals For Admission of Attorneys and Counselors-At-Law (Judiciary Law-Appendix) requires every applicant to "produce before a Committee on Character and Fitness * * * and file with such Committee evidence that he possesses the good moral character and general fitness requisite for an attorney and counselor-at-law as provided in Section 90 of the Judiciary Law, which must be shown by the affidavits of two reputable persons residing in the city or county in which he resides."

Plaintiffs in 68 Civ. 2938 allege in their complaint that the Judiciary Law § 90, C.P.L.R. Rules 9401-9406, and Rule VIII of the Court of Appeals lack sufficient standards and are in violation of, inter alia, the First and Fourteenth Amendments.[1]

With greater specificity, these plaintiffs allege that Rule 9406: 1) improperly requires an applicant to bear an unlimited and indefinite burden of proof of his belief in and loyalty to the form of our government; 2) is unreasonably vague; and 3) improperly makes belief in our form of government a condition of admission to the bar.

[1] Complaint, para. 15(a).

Also, plaintiffs say belief in our form of government is not reasonably related to the legitimate objectives of the state in determining character and fitness.[2]

Plaintiffs in 68 Civ. 2938 then assail in their complaint certain questions propounded by the Committees on Character and Fitness of the First and Second Departments of the Appellate Division in their questionnaires. Examples of the questions under attack are the following:

> "20. Have you participated in activities of a public or private nature or in philanthropic, religious, or social services? If so, state fully.
>
> "21(A). Give the names, addresses, objects of and period of membership in each and every club, association, society or organization of which you are or have been a member."[3]

* * * * * *

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[2] Complaint, para. 15(b).

[3] Questions 20 and 21(A) appearing in Questionnaire of First Department. Other questions attacked are:

"22. (A) Are you now or have you ever been a member of or affiliated in any way with any of the organizations or groups listed as subversive by the Attorney General of the United States?

(B) Have you paid dues to, contributed in any way or signed a petition for any such organization or group?

If your answer is yes to either subdivision of this question, give the following information:

Name and address of organization or group * * *

When you became a member or affiliated with it * * *

Period of your association or connection with it * * *

How and why you became associated or connected with it * * *

How and why you severed your connection with it, if you did."

"23. Have you ever participated in any way whatsoever in the activities of such organizations or groups? If so, to what extent."

"32. Have you written any articles for publication? If so, give the circumstances, the name of publication, the date of publication, and the title and subject matter of the article.

• • • • • •

"36. (a) Are you now, or have you ever been at any time (including the time during which you attended high school, college and law school, and including the time during which you engaged in military service or any community activity) a member of any club, association, society or organization or political party.

(b) If answer be yes, give the name, address and objects of each and every such club, association, society or organization or party and state the period of your membership and your position or title therein."[4]

The foregoing questions are challenged on the ground that they violate the First and Fourteenth Amendments. Plaintiffs say that they are: 1) overbroad and without reasonable limitation; 2) compel disclosure of political beliefs, associations, speech and activities protected by the First Amendment and make such factors relevant in determining admission to the bar; 3) compel disclosure of re-

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[4] Questions contained in Questionnaire of Second Department. Other questions attacked are:

"35. (a) Are you pledged now or have you ever been pledged to aid in effecting changes in our form of government by force or violence or any other unlawful means?

(b) Are you now or have you ever been a member of any party or organization created for such purpose or for the propagandizing or the furtherance thereof?

(c) If answer is yes, state the name of the party or organization.

(d) Are you now, or have you ever been, a member of the Communist Party, or have you ever been enrolled as a member of the Communist Party?

ligious activities, beliefs and associations and likewise make such factors considerations in determining admission to the bar.[5]

Plaintiffs in 68 Civ. 2938 attack the constitutionality of the oaths required in the Committees' Questionnaires on virtually the same constitutional grounds set forth above.[6] The oaths required by the First Department are:

> "24(A) Do you believe in the principles underlying the form of government of the United States? State on a rider, in not less than 100 words, what you believe those principles to be.
>
> (B) Can you conscientiously and do you affirm that you are, without any mental reservations, loyal to the Government of the United States?"

The oaths required by the Second Department are as follows:

> "33. Do you believe in the principles underlying the form of government of the United States? Briefly state the reasons for your answers.
>
> "34. Do you conscientiously affirm (without any mental reservation) that you are loyal to the Government of the United States of America?"

Plaintiffs challenge on similar constitutional grounds the content of the personal interviews of applicants required by the Committees. Plaintiffs claim that improper inquiry is often made concerning applicant's First Amendment activities.[7]

Finally, plaintiffs assail the practice of the Committees in requiring applicants to obtain and submit affidavits of "character and home life" on the ground that this practice

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[5] Complaint, para. 15(c) and (d).

[6] Complaint, para. 15(e).

[7] Complaint, para. 16(a).

constitutes an unlimited and indiscriminate invasion of the applicants' privacy in violation of the Fourth and Fourteenth Amendments.[8] Similar allegations are made in the complaint in 68 Civ. 2917.[9]

Plaintiffs in both cases claim that the foregoing statutes, rules, regulations and practices have the effect of deterring and inhibiting the exercise of rights of speech, association and belief guaranteed by the First Amendment.

The relief sought by plaintiffs in each action is a declaratory judgment declaring the above statutes, rules, questions and practices unconstitutional and a permanent injunction enjoining defendants from enforcing same.

These actions are before this court on motions by plaintiffs to convene three-judge courts pursuant to 28 U.S.C. § 2281 et seq. Plaintiffs in 68 Civ. 2917 also move to consolidate the two suits pursuant to Rule 42(a), Fed.R. Civ.P. The latter motion and the motion to convene a three-judge court in 68 Civ. 2917 were referred to this court, with consent, by Judge Wyatt on August 27, 1968.

Only a three-judge district court operating under 28 U.S.C. § 2284 may enjoin the enforcement or execution of a state statute as unconstitutional. Such court must be convened where the constitutional issue or issues are not wholly insubstantial or obviously without merit. Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 82 S.Ct. 1294, 8 L.Ed.2d 794 (1962); Green v. Board of Elections of City of New York, 259 F.Supp. 290 (S.D.N.Y. 1966), aff'd 380 F.2d 445 (2d Cir. 1967), cert. denied, 389 U.S. 1048, 88 S.Ct. 768, 19 L.Ed.2d 840 (1968). Without in any way passing on the substantiality of other constitutional issues raised by plaintiffs, the court finds certain of the constitutional issues not wholly insubstantial.

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[8] Complaint, para. 16(b).

[9] See paragraphs 6, 8, 9, 10.

C.P.L.R. Rule 9406 requires an applicant for admission to the bar to prove his belief in the form of the government of the United States and his loyalty. A substantial constitutional question is raised as to whether placing the burden of proof on the applicant will not deter speech and association protected by the First and Fourteenth Amendments when the consequences of failure of proof are severe and the matter to be proved is difficult of definition. Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958)

A substantial question is raised as to whether the language of C.P.L.R. Rule 9406 and the required oaths is unconstitutionally vague or broad and consequently infringes upon First Amendment freedoms. Baggett v. Bullitt, 377 U.S. 360, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964); Elfbrandt v. Russell, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321 (1966); Keyishian v. Board of Regents, etc., 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967); Whitehill v. Elkins, 389 U.S. 54, 88 S.Ct. 184, 19 L.Ed.2d 228 (1967).

The questions set forth above which are contained in the Character Committees' Questionnaires call for a broad disclosure of all of the applicant's activities and associations. A substantial constitutional question is raised as to whether the threat of such disclosure will not deter the prospective member of the bar in his associations while in college and law school in violation of the First and Fourteenth Amendments; Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960); Schneider v. Smith, 390 U.S. 17, 88 S.Ct. 682, 19 L.Ed.2d 799 (1968).

Plaintiffs also make an adequate showing of the need for equitable relief. The nature of the wrong claimed is a "chilling" of speech and association while in college and law school, and the wrong claimed would not be remedied by an attack on the regulatory scheme during the process

of admission when the damage had been done. Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965).[10]

Accordingly, the motions to convene three-judge courts are granted and the cases are referred herewith to the Chief Judge of the Circuit. 28 U.S.C. § 2284.

The plaintiffs' motion in 68 Civ. 2917 to consolidate the two suits under Rule 42(a), Fed.R. Civ.P., is improperly presented at this time. The power of a single district judge in hearing an application to convene a three-judge court is limited to the jurisdictional inquiries of whether a substantial constitutional question is presented, a basis for equitable relief is presented, and 28 U.S.C. § 2281 is otherwise complied with. Green v. Board of Elections of City of New York, supra, 259 F.Supp. at 292; Idlewild Bon Voyage Liquor Corp. v. Epstein, supra, 370 U.S. at 715, 82 S.Ct. 1294. Such a motion might be heard by a single judge of the three-judge court after it is appointed, but then the decision by the single judge is subject to the safeguard of review by the full court before final hearing of the suit, 28 U.S.C. § 2284(5). The motion to consolidate is denied without prejudice to its renewal before either three-judge court.

So ordered.

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[10] The individual plaintiffs in 68 Civ. 2917 are presently law students and plan to apply for admission to the New York bar. One of the organizational plaintiffs in 68 Civ. 2938 is composed of law students similarly situated. The individual plaintiffs in 68 Civ. 2938 have passed New York's written bar exam and allege infringement of their political and civil rights while awaiting admission.

Motion to Dismiss

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

SIRS:

PLEASE TAKE NOTICE that the undersigned, having been informed by letter dated October 16, 1968, signed by United States District Judge Constance Baker Motley, that the three-judge panel appointed to hear the above-entitled cases will hear all motions in these cases on November 1, 1968, will move this Court, on all the pleadings, affidavits and other papers herein, at the opening of Court, at 11:45 A.M. in the Court of Appeals Court Room, 17th Floor, United States Court House, Foley Square, New York, New York 10007, for an order dismissing the complaints in the above-entitled actions, upon the grounds that: 1) this Court does not have jurisdiction of the subject matter of this action; 2) that this Court does not have jurisdiction over the persons of the defendants; and 3) that pursuant to Rule 3 to 6 and 12 of the Federal Rules of Civil Procedure, service of process upon the defendants allegedly served be vacated upon the ground that the plantiffs' affidavits of service patently indicate that the process served is not sufficiently served or legally valid; 4) that the complaints herein, upon their face, fail to state a cause of action; 5) that the subject matter of admission of attorneys to the Bar of the State of New York is a matter over which the Courts of the State of New York have exclusive jurisdiction, except for certain matters of Federal due process which are not pertinent here; 6) that there are available in the New York Courts remedies to review the alleged constitutional procedural infirmities set forth in the complaints herein; 7) that New York

provides all applicants for admission to the Bar with adequate remedies to review both the procedures and determinations of the defendants; 8) that the individual plaintiffs have not resorted to or exhausted the remedies so provided; and 9) that the defendants are arms of the judicial branch of the Government of the State of New York, are immune from suit in this Court and the functions of the defendants with which the plaintiffs seek to have this Court interfere concern the internal operations of those judicial bodies; 10) that the plaintiffs have failed to include as defendants to this action, parties indispensable to its determination; and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York, October 17, 1968.

Yours, etc.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for the Defendants
Appearing herein "Specially"
For the Defendants Allegedly
"Served"
80 Centre Street
New York, New York 10013

TO: LEVY, GUTMAN & GOLDBERG, ESQS.
Attorneys for Plaintiffs Law Students, etc.
363 Seventh Avenue
New York, New York 10001

Motion to Dismiss
68 Civ. 2917; 68 Civ. 2938

RABINOWITZ, BOUDIN & STANDARD, ESQS.
Attorneys for Plaintiffs
Wexler, et al.
30 E. 42nd Street
New York, New York 10017

Clerk of the United States
District Court for the
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Also To: Alan H. Levine, Esq.
c/o Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Affidavit of Theodore R. Freschi

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

THEODORE R. FRESCHI, being duly sworn, deposes and says:

I am the Secretary of the Committee on Character and Fitness of the Supreme Court of the State of New York, Appellate Division, First Department, a defendant in these actions. I submit this affidavit in opposition to the plaintiffs' motion for summary judgment and in support of defendants' motion to dismiss the complaints.

Upon information and belief, on May 9, 1968, a meeting was held attended by the justices of the Appellate Division, First Department and the Appellate Division, Second Department. At that meeting, which was the culmination of many months of study by both courts, a uniform Statement and Questionnaire was approved by both courts to be submitted to applicants for admission to the Bar in the First and Second Judicial Departments. A copy of that Statement and Questionnaire (as distributed by the First Department) is annexed hereto as Exhibit A.

The Statement and Questionnaire was printed and distributed in the First Department in June 1968, prior to the commencement of these actions. I understand that the Statement and Questionnaire is now being distributed to applicants in the Second Judicial Department.

Affidavit of Theodore R. Freschi
68 Civ. 2917; 68 Civ. 2938

Following the commencement of these actions, the Appellate Divisions for the First and Second Departments agreed to delete questions 28(a) and (b) and 29(a) on the annexed Statement and Questionnaire, which deletions have been put into effect immediately.

Annexed as Exhibit B hereto is the form for the affidavit of character being distributed to applicants in the First Department.

Sworn to before me this
12th day of November, 1968.

Statement and Questionnaire

Reproduced as Exhibit "A"

to Second Amended Complaint

in 68 Civ. 2917, *see supra* p. 19.

No.

AFFIDAVIT WITH RESPECT TO CHARACTER OF APPLICANT

Supreme Court of the State of New York

APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

In the Matter of the Application

of

1. .....*

For Admission to the Bar

STATE OF
COUNTY OF } ss.:

2. ....., being duly sworn, makes the following statement:

3. Residence of affiant:

4. Nature of affiant's business:

5. Business address of affiant:

6. Length and nature of affiant's acquaintance with applicant:

   a. Residence of applicant:

   b. Persons with whom applicant lives (if known to affiant):

7. Affiant's conclusions as to applicant's moral character:

8. Facts upon which affiant's knowledge or opinion as to applicant's moral character is based:

9. IF THIS AFFIDAVIT IS MADE BY THE SPONSORING ATTORNEY, his sponsors' statement (see items 9 and 10 of instruction sheet) may be made here:

121/122
Freschi Affidavit: Exhibit B

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4. Nature of affiant's business:

5. Business address of affiant:

6. Length and nature of affiant's acquaintance with applicant:

   a. Residence of applicant:

   b. Persons with whom applicant lives (if known to affiant):

7. Affiant's conclusions as to applicant's moral character:

8. Facts upon which affiant's knowledge or opinion as to applicant's moral character is based:

9. IF THIS AFFIDAVIT IS MADE BY THE SPONSORING ATTORNEY, his sponsors' statement (see items 9 and 10 of instruction sheet) may be made here:

.....
(Signature)

Sworn to before me this.....

day of ....., 19.....

(DO NOT FORGET TO HAVE ALL AFFIDAVITS NOTARIZED)

(NOTE: No back shall be put on Affidavits)

•Give name of applicant as it appears on the certificate of the State Board of Law Examiners.

Affidavit of John F. Hennessy

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

JOHN F. HENNESSY, being duly sworn, deposes and says:

I am the Secretary of the Committee on Character and Fitness of the Supreme Court of the State of New York, Appellate Division, Second Department, a defendant in one of these actions (68 Civ. 2938). I submit this affidavit in opposition to the plaintiffs' motion for summary judgment and in support of defendants' motion to dismiss the complaints.

Upon information and belief, on May 9, 1968, a meeting was held attended by the justices of the Appellate Division, First Department and the Appellate Division, Second Department. At that meeting, which was the culmination of many months of study by both courts, a uniform Statement and Questionnaire was approved by both courts to be submitted to applicants for admission to the Bar in the First and Second Judicial Departments. A copy of that Statement and Questionnaire (as distributed by the Second Department) is annexed hereto as Exhibit A.

I understand that the Statement and Questionnaire was distributed by the First Department in June of 1968. The Statement and Questionnaire is now being distributed to applicants in the Second Department.

Affidavit of John F. Hennessy
68 Civ. 2917; 68 Civ. 2938

Following the commencement of these actions, the Appellate Divisions for the First and Second Departments agreed to delete questions 28(a) and (b) and 29(a) on the annexed Statement and Questionnaire, which deletions have been put into effect immediately.

Annexed as Exhibit B hereto is the form for the affidavit of Character and Residence now being distributed to applicants in the Second Department.

Sworn to before me this
12th day of November, 1968.

Form 1

Issued..... Office Telephone .....

Submitted..... Home Telephone .....

COMMITTEES ON CHARACTER AND FITNESS

SECOND JUDICIAL DEPARTMENT

APPLICATION FOR ADMISSION TO THE BAR AND STATEMENT REQUIRED PURSUANT TO ARTICLE 94 OF THE CIVIL PRACTICE LAW AND RULES

DIRECTIONS

(Read all these directions carefully before attempting to answer any question.)

1. This is a statement made under oath. Applicant's failure fully and accurately to disclose any fact or information called for by any question may result in the denial of the application for admission, or if applicant shall have been admitted before the discovery thereof, in the revocation of his license to practice law.

2. Answers must be in black ink, in applicant's handwriting or typewriting, except as hereinafter indicated.

3. *Unless otherwise indicated, every question and every part of each question must be answered, even though the answer be negative.*

4. If the applicant cannot comply with any of the requirements, he must state in detail the efforts he has made to comply and why he cannot. Answers on information and belief will be accepted only in connection with matters which the applicant cannot be expected to remember because of extreme youth or other equally sufficient reason. All statements made on information and belief must be so designated in the *sworn statement, and the sources of information must be given.*

5. Should the space left for any answer be insufficient, the applicant shall complete his answer on a rider, specifying the number of the question to which it relates, attached to this *sworn statement.* Avoid riders whenever possible.

6. In stating addresses give street and number, if any, city, village and state or country. If an address is in New York City, give the borough *in addition* to the city. *If present address of applicant be in a village, give also the county.*

7. In giving a period which is continuing at the date of verification of this sworn statement, always give such period as continuing "to date."

To the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department:

The undersigned hereby applies for admission to practise as an attorney and counselor-at-law in all courts of the State of New York, and in support of such application submits the following sworn statement and the accompanying affidavits and other papers:

1. (a) State full name ..... (First) (Middle) (Last)

(b) Have you ever used or been known by any other name?.....If so, state in full each name (other than the name above given) which you have used or by which you have at any time been known, and the reasons for each such name.

125/126
Hennessy Affidavit: Exhibit A

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APPLICATION FOR ADMISSION TO THE BAR AND STATEMENT REQUIRED PURSUANT TO ARTICLE 94 OF THE CIVIL PRACTICE LAW AND RULES

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2. Answers must be in black ink, in applicant's handwriting or typewriting, except as hereinafter indicated.

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1. (a) State full name ..... (First) (Middle) (Last)

(b) Have you ever used or been known by any other name?.....If so, state in full each name (other than the name above given) which you have used or by which you have at any time been known, and the reasons for each such name.

(If change was made by court submit copy of petition, a certified copy of the order and certificate of compliance therewith.)

5/120 Affidavit: Exhibit A

2. State the following:

(a) Age, date, and place of birth.

(b) If a naturalized or derivative citizen, state date when and place where naturalization or right to derivative status was acquired, and submit certificate of naturalization or equivalent from any governmental office. (Such certificate will be returned.)

(c) Present residence (give full mailing address.

(d) Full name of all persons with whom you are presently living, and relationship to you.

(e) Length of actual residence in the State of New York.

3. State whether married or single.

If ever married, answer the following:

(a) When, where, and to whom married; give spouse's full name, together with any other name by which spouse has been known. (If married more than once, list marriages chronologically.)

(b) Do you reside with your spouse?

If not, state reasons for separation. (If through divorce, annulment or separation, submit copy of pleadings, certified copy of decree, judgment or order and proof of compliance with any directive portions thereof.)

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any governmental office. (Social Security Number will be required.)

(c) Present residence (give full mailing address.

(d) Full name of all persons with whom you are presently living, and relationship to you.

(e) Length of actual residence in the State of New York.

3. State whether married or single.

If ever married, answer the following:

(a) When, where, and to whom married; give spouse's full name, together with any other name by which spouse has been known. (If married more than once, list marriages chronologically.)

(b) Do you reside with your spouse?

If not, state reasons for separation. (If through divorce, annulment or separation, submit copy of pleadings, certified copy of decree, judgment or order and proof of compliance with any directive portions thereof.)

4. Give the following information relating to your parents:

	Father	Mother
(a)	Name in full.	
(b)	Born in United States (Yes or No)	
(c)	Whether living or not.	
(d)	Residence.	
(e)	Present or most recent occupation, if retired or deceased.	

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5. Give the following information as to residence.

(a) The cities and states or countries in which you resided for more than three months from the date of your birth until you first entered high school or its equivalent. (If answer is on information and belief, state source of information.)

(b) The full and exact address of your residence at the time you first entered high school or its equivalent.

(c) State every permanent residence you have ever had, in the United States or elsewhere, since first entering high school or its equivalent with exact address of each, and the month and year of the beginning and ending of each such residence. (Exclude military addresses unless off base.)

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county (If in New York City, also give Borough)	State or Country
	Permanent Residences (List same chronologically. *Temporary residences*, which are residences *away from home* for educational, business or other special purposes, are to be listed on next page. *Do not interrupt the continuity of the periods of permanent residence by subtracting periods of temporary residence.*)		
From to			
From to			
From to			
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(c) State every permanent residence you have ever had in the United States or elsewhere, since first entering high school or its equivalent with exact address of each, and the month and year of the beginning and ending of each such residence. (Exclude military addresses unless off base.)

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county (If in New York City, also give Borough)	State or Country
	Permanent Residences (List same chronologically. *Temporary residences*, which are residences *away from home* for educational, business or other special purposes, are to be listed on next page. *Do not interrupt the continuity of the periods of permanent residence by subtracting periods of temporary residence.*)		
From to			
From to			
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From to			
From to			
From to			
From to			

(Continue permanent residences if necessary, and give temporary residences on next page.)

(Permanent Residences Continued)

Period (Give month and year of beginning and ending.)	Street and Number	City or village, town and county (If in New York City, also give Borough)	State or Country
From to			
From to			
From to			
From to			

(d) Temporary Residences

(These include only residences **away from home** for educational, business or other special purposes except summer vacations. Do not interrupt continuity of periods of permanent residence, to be given above, **by subtracting periods** of temporary residence.)

From to			
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6. List **all schools** below college grade attended, giving **month and year** of the beginning and ending of attendance at each.

Name or designation of school	City, town or county	State	Month and year

Did you graduate from High School?.....Date of Graduation?.....

7. List **college or colleges** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

8. If you did not receive a college degree before entering law school give date of filing **Law Students Qualifying Certificate**.....

9. List **law schools** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

10. List any other schools of any kind or pursued any course of studies, in addition to those hereinabove mentioned.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

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Did you graduate from High School?.....Date of Graduation?.....

7. List **college or colleges** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

8. If you did not receive a college degree before entering law school give date of filing Law Students Qualifying Certificate.....

9. List **law schools** attended, giving **month and year** of the beginning and ending of attendance at each, and degrees received. If you did not receive a degree, state the reason.

Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

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Name	City or Town	State or Country	Degree	Month and Year of Beginning and ending of Period or Periods of Attendance, Indicating Summer Sessions Separately	Hours of Beginning and Ending of Daily Attendance. If Hours for Classes Varied, Give Outside Daily Hours

11. (a) Have you ever been denied admission to any school, college, law school, or other similar institution? If your answer is yes, state the facts:

.....

.....

(b) Have you ever been placed on probation, or dropped, or suspended or expelled from, or have you withdrawn from or left any institution of learning, **or otherwise been subjected to discipline, by any such institution,** or requested or advised for any reason to discontinue your studies therein temporarily or otherwise?
If your answer is yes to either (a) or (b), give the name of any such institution and state the cause, circumstances and date of each such occurrence.

12. Have you ever been employed in any business or profession or any other occupation whatsoever, other than the law? If so, enumerate all such employments in chronological order. Include employments by members of family or other relatives and employments without monetary compensation. Submit letter on letterhead of employer or an affidavit from each such employer giving nature of employment, period of service, whether or not satisfactory and reason for termination.

Month and Year of Beginning and Ending of Period of Employment	Hours of Beginning and Ending of Daily Period	Name of Employer (Individual, partnership or corporation. Do not give name of an agent of employer.)	Address of Employer (Give street, number, city or town and state or country.)	Nature of Employer's Business	Position or Positions held by Applicant	Reason for Termination

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13. Have you ever been employed in or associated with any law office, law department or legal institution? If so, enumerate all such employments and associations in chronological order. Include employments by members of family or other relatives and employments without monetary compensation. Submit affidavit from each employer giving same information as required under question 12.

Month and Year of Beginning and Ending of Period of Employment	Hours of Beginning and Ending of Daily Period	Name of Employer (Individual, partnership or corporation. Do not give name of an agent of employer.)	Address of Employer (Give street, number, city or town and state or country.)	Nature of Employer's Business	Position or Positions held by Applicant	Reason for Termination

14. Have you ever been engaged on your own account in any occupation, business, or profession?..... If so, give in detail the nature and location thereof and the month and year of the beginning and ending of your engagement in or connection therewith. If any such business was carried on by you in partnership with others, give the names and addresses of all partners and the nature of the business. If the business was carried on by a corporation in which you owned an interest list its name, address, nature of the business and your connection with it. If any business or profession in which you engaged has been discontinued or your connection therewith has ceased state why and whether there are unpaid judgments, debts or claims or pending litigation.

15. Have you ever been discharged by any employer? If so, give the name of each such employer and attach your affidavit stating date, cause and circumstances in detail.

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Period					

14. Have you ever been engaged on your own account in any occupation, business, or profession?..... If so, give in detail the nature and location thereof and the **month and year** of the beginning and ending of your engagement in or connection therewith. If any such business was carried on by you in partnership with others, give the names and addresses of all partners and the nature of the business. If the business was carried on by a corporation in which you owned an interest list its name, address, nature of the business and your connection with it. If any business or profession in which you engaged has been discontinued or your connection therewith has ceased state why and whether there are unpaid judgments, debts or claims or pending litigation.

15. Have you ever been discharged by any employer? If so, give the name of each such employer and attach your affidavit stating date, cause and circumstances in detail.

16. Do you affirmatively represent that, in connection with all your employments for which no proof has been supplied, your services were satisfactory and that you were not discharged nor were your services terminated for cause, nor were you requested or advised to resign from or leave any such position?
If answer is no, give full details as to each such incident.

17. (a) Have you ever applied for admission to the Bar of the State of New York? If so, where, when, and with what result?

(b) Have you ever engaged in or has your conduct ever been called in question with reference to the unauthorized practice of law?

(c) Have you ever been employed by or otherwise connected with any person, firm, or corporation whose conduct was called in question on the subject of unauthorized practice of law while you were so employed or connected?

(d) Have you ever tried any action or proceeding, argued any motion, drawn legal papers, given legal advice or held yourself out as an attorney or counselor-at-law in this State? If you have done any of these, state the facts.

If your answer is yes as to any part of this question, state the matter fully.....

18. (a) Have you ever registered as a law student or applied to take or taken the bar examination in any country, state or jurisdiction other than the State of New York?

(b) Have you applied for admission to practice as an attorney or counselor in any country, state or jurisdiction other than the State of New York? If your answer to (a) or (b) is "Yes", state specifically the disposition made of the application or the result of the bar examination; if admitted, (a) give the name and address of each court by which admitted, the date of such admission, the periods of practice and all the office addresses where you have practiced, with the names and addresses of partners, if any and (b) whether you have ever been reprimanded, disciplined, suspended or disbarred as an attorney or counsellor-at-law or whether any charges or complaints have ever been preferred against you, and if so, the nature of the charges and their disposition.

(Applicants admitted in other jurisdictions must submit proof from each Grievance Committee, or body entertaining complaints against lawyers, certifying as to whether charges have been filed with such Committee or body against the applicant, and, if so, the substance of the charges and the disposition thereof. Instruction Sheet D may be obtained from Committee Office.)

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19. Are you registered for Selective Service?
If so, state:
(a) Local board number and address:

(b) Original classification and each reclassification, giving date of each such classification.

20. Have you ever been rejected for service in any of the armed services of the United States or of any other country? If your answer is "Yes," give date and reason, stating facts fully, whether the reason be physical, mental, moral or otherwise and submit photostat copy of any documentary proof thereof.

21. (a) Have you at any time or in any manner, served in any of the armed services of the United States, including reserves? If the answer is "Yes," state (a) when, where, and which service; (b) period and nature of service rendered: (c) if discharged give date and nature of discharge and submit photostat copy of each discharge certificate or release papers.

(b) Have you served in the armed forces (reserves or otherwise) of any country other than the United States of America? If the answer is yes, give name of country, inclusive dates of service, and reason for separation from service. (Submit photostat of each discharge or release.)

22. As a member of any Armed Forces have you been a subject of any charges or complaints, formal or informal, or have any proceedings been instituted against you or have you been a defendant in any courts martial?

If answer is "Yes," state the facts.

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(b) Original classification and each reclassification, giving date of each such classification.

20. Have you ever been rejected for service in any of the armed services of the United States or of any other country? If your answer is "Yes," give date and reason, stating facts fully, whether the reason be physical, mental, moral or otherwise and submit photostat copy of any documentary proof thereof.

21. (a) Have you at any time or in any manner, served in any of the armed services of the United States, including reserves? If the answer is "Yes," state (a) when, where, and which service; (b) period and nature of service rendered; (c) if discharged give date and nature of discharge and submit photostat copy of each discharge certificate or release papers.

(b) Have you served in the armed forces (reserves or otherwise) of any country other than the United States of America? If the answer is yes, give name of country, inclusive dates of service, and reason for separation from service. (Submit photostat of each discharge or release.)

22. As a member of any Armed Forces have you been a subject of any charges or complaints, formal or informal, or have any proceedings been instituted against you or have you been a defendant in any courts martial?

If answer is "Yes," state the facts.

23. State whether you have ever

(Answer each subdivision of this question "Yes" or "No.")

(a) testified or been called as a witness in any action, proceeding or investigation to which you were not a party;

(b) been ticketed, or summoned, or arrested, or taken into custody, or indicted, or convicted, or tried for, or charged with, or pleaded guilty to the violation of any law, ordinance, traffic or parking regulation or the commission of any felony, or misdemeanor, or been requested to appear before any prosecuting or investigative agency in any matter?
(Indicate all such incidents, including proceedings as a juvenile offender, no matter how minor the infraction or whether guilty or not. Although a conviction may have been expunged from the records by order of court, it nevertheless must be disclosed in the answer to this question.)

(c) failed to answer on the return date any ticket, summons or other legal process served upon you at any time? If so, was any warrant, subpoena, or further process issued against you as a result of your failure to respond to such legal process?

(d) been declared a ward of any court, or adjudged an incompetent, or have any proceedings been brought to have you declared a ward of any court or adjudged an incompetent, or have you been committed to any institution or been a paient in any institution for the care of persons suffering from mental or nervous disorders or drug addiction, drug abuse or alcohoism?

(e) been charged with fraud or any other matter involving moral turpitude?

(f) been a party to or otherwise involved in any action or proceeding, or investigation either civil or criminal, not covered by answers to the foregoing subdivisions of this question?

If your answer is "Yes" to any subdivision of this question, state the facts in detail and give in each case name and locality of court or agency, dates of beginning and termination of action or proceeding, and the judgment or other disposition below.

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24. (a) Are there any unsatisfied judgments against you? If so, list the same giving name and address of judgment creditor and the court by which judgment was rendered, together with the date and amount thereof and the nature of the claim on which it was based.

(b) Are you in default in the performance or discharge of any duty or obligation imposed upon you by any governmental agency or decree or order of any court including alimony and support orders and decrees?
If so, state the facts.

(c) Are you indebted to anyone? If so, list all debts stating name and address of creditor and amount, date, nature and status of indebtedness.

(d) Has any one ever asserted a claim or demand against you, which has not been made the subject of any action or legal proceeding? If so, state the facts and the present status of the matter.

(e) Have you ever asserted any claim or demand against any person, partnership or corporation, or governmental agency which has not been made the subject of any action or legal proceeding?
If so, state the facts and the present status of the matter.

25. (a) Have you ever held a license the procurement of which required proof of good character?.....
If so, as to each such license, state the date it was granted and the name and address of the authority granting it.

(b) If your application for such a license was not granted state the facts.

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(b) Are you in default in the performance or discharge of any duty or obligation imposed upon you by any governmental agency or decree or order of any court including alimony and support orders and decrees?
If so, state the facts.

(c) Are you indebted to anyone? If so, list all debts stating name and address of creditor and amount, date, nature and status of indebtedness.

(d) Has any one ever asserted a claim or demand against you, which has not been made the subject of any action or legal proceeding? If so, state the facts and the present status of the matter.

(e) Have you ever asserted any claim or demand against any person, partnership or corporation, or governmental agency which has not been made the subject of any action or legal proceeding?
If so, state the facts and the present status of the matter.

25. (a) Have you ever held a license the procurement of which required proof of good character?.....
If so, as to each such license, state the date it was granted and the name and address of the authority granting it.

(b) If your application for such a license was not granted state the facts.

(c) Have you ever held a bonded position?..... If so, specify the nature of position, dates, amount of bond, and whether or not anyone ever sought to recover on your bond or cancelled the same?

26. Have you ever organized or helped to organize or become a member of any society or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means?.....
If your answer is in the affirmative, state the facts below.

27. (a) Do you believe in the principles underlying the form of government of the United States of America?

(b) Can you conscientiously and do you affirm that you are, without any mental reservation, loyal to and ready to support the Constitution of the United States?

28. (a) Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or social services?..... If so, state fully.

(b) If you engaged in extracurricular activities (athletic, dramatic, debating, club, committee, administration, etc.) in college, indicate approximate amount of time spent and responsibility involved.

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29. (a) Give the names, addresses, objects of and period of membership in each and every club, association, society or organization of which you are or have been a member other than those associated with and recognized by accredited schools and colleges.

(b) Have you ever been disciplined, expelled, suspended, ordered to resign from any club, association, society or organization?.....If your answer is "Yes," state the facts.

30. If admitted, do you intend to practice law?..... If you do not intend to practice law state why.

31. Is there **any** incident in your life not called for by the foregoing questions which has any detrimental bearing on your character or fitness? If the answer is "Yes," state the facts.

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(b) Have you ever been disciplined, expelled, suspended, ordered to resign from any club, association, society or organization?.....If your answer is "Yes," state the facts.

30. If admitted, do you intend to practice law?..... If you do not intend to practice law state why.

31. Is there any incident in your life not called for by the foregoing questions which has any detrimental bearing on your character or fitness? If the answer is "Yes," state the facts.

32. (a) Have you read the Canons of Ethics adopted by the American and New York State Bar Associations?.....

(b) Will you conscientiously endeavor to conform your profession conduct to them?.....

(THE FOLLOWING TWO PARAGRAPHS ARE TO BE COPIED BY THE APPLICANT IN HIS USUAL HANDWRITING IN THE SPACE PROVIDED BEFORE THE SIGNATURE OF THE APPLICANT.)

I understand that this application is a continuing application, and that I must give correctly the information herein sought as of the date of my appearance before the Appellate Division to be sworn in as an attorney and counselor-at-law. I will, therefore, before such appearance, notify the Secretary of the Committee as to any change in respect of any matter concerning which information is herein sought.

I will also submit such additional affidavits or papers, and supply such additional information as may be requested.

COPY FOREGOING TWO PARAGRAPHS HERE

Signature of applicant.....

(Must conform to name on Certificate of State Board of Law Examiners)

STATE OF .....
} ss.:
COUNTY OF .....

I, ..., being duly sworn, say: I have read the foregoing questions and have fully, truthfully and accurately answered the same. The foregoing answers are true of my own knowledge, except if stated to be made upon information and belief, and as to such answers, I believe them to be true.

Signature of applicant.....

(Sign as above)

Subscribed and sworn to before me this day of , 19 .

Form 2

NEW YORK SUPREME COURT, APPELLATE DIVISION,
SECOND DEPARTMENT

IN THE MATTER OF THE APPLICATION

of

.....
(Insert name of applicant)

for Admission to Practise as an Attorney and Counselor-at-Law

Form for Affidavit of Character and Residence

PLEASE NOTE

The answers to all questions are to be written, preferably in typewriting, by or under the direction of the affiant.

It is desired that both the subject matter and the language of each answer shall be supplied by the affiant and not by the applicant.

Nothing not personally known to affiant should be stated.

STATE OF .....

COUNTY OF ..... } ss.:

....., the affiant, being duly sworn, deposes
(Name of Affiant)

and says that the answers to the following questions have been written by or under the direction of affiant, and that both questions and answers have been carefully read by affiant and that the several answers are true of affiant's own knowledge, except those stated to have been made on information and belief, and those stated to give the opinion or belief of affiant, and as to those answers, affiant believes them to be true.

1. (a) Home address of affiant (including County)
   (b) Business address.

2. Nature of business? (If a lawyer, state whether or not you are a **practising attorney** of the Supreme Court of the State of New York, and/or an attorney of any court or courts in any other state, country or jurisdiction, specifying each such state, country or jurisdiction, and give place of admission to the Bar, and approximate date of such admission.)

3. How long have you known the applicant personally?

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.....
(Insert name of applicant)

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3. How long have you known the applicant personally?

4. State whether you are related to applicant by blood or marriage, or if there is any business, professional or similar relationship between you and the applicant or his family?

(OVER)

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Exhibit B

5. Describe briefly your associations with the applicant, setting forth how such associations began, and indicate in what activities (business, scholastic, cultural, recreational, athletic, social or otherwise) you have participated with applicant. It is not a sufficient answer merely to repeat the above words in parenthesis, but the particular activities should be specified.

6. How often have you come in contact with applicant during the entire period of acquaintance?
("Frequently" or "often" or other indefinite statement is not a satisfactory answer.)

7. What is your conclusion as to applicant's moral character?
(Reserve details for next question.)

8. State in detail the facts upon which your knowledge or opinion as to applicant's character is based.

9. Have you visited applicant's

(a) parental home;

(b) marital home, if any;

(c) any other home or place of abode applicant may have had?

[redacted]

10. (a) How often have you visited the parental, marital or other home or place of abode of applicant?

("Frequently" or "often" or other indefinite statement is not a satisfactory answer. Note that in most cases visits will be less frequent than the contacts mentioned in Q. 6, above.)

(b) During what years (stating approxiate dates)?

(c) At what addresses (listing them specifically)?

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(Reserve details for next question.)

8. State in detail the facts upon which your knowledge or opinion as to applicant's character is based.

9. Have you visited applicant's

(a) parental home;

(b) marital home, if any;

(c) any other home or place of abode applicant may have had?

[redacted]

10. (a) How often have you visited the parental, marital or other home or place of abode of applicant?

("Frequently" or "often" or other indefinite statement is not a satisfactory answer. Note that in most cases visits will be less frequent than the contacts mentioned in Q. 6, above.)

(b) During what years (stating approxiate dates)?

(c) At what addresses (listing them specifically)?

Sworn to before me this

day of 19

(Insert date)

.....
(Affiant to sign here)

.....
(Attesting officer to sign here)

.....
(Official designation)

Statement of Defendants Pursuant to General Rule 9(g)

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

Responding to the statement under Rule 9(g) submitted by plaintiffs in 68 Civ. 2938,

A. Defendants do not have sufficient information to determine whether genuine issues of fact remain to be tried as to the claims in paragraphs 1, 2, 3, and 4 of said statement, and therefore do not agree that no genuine issue of fact exists as to said claims, F.R.C.P. 56(f).

B. Defendants agree that no issue of fact exists as to the statement in paragraph 5.

C. Responding to the statements contained in paragraphs 6, 7, 8, 9, and 10, Defendants state that the provisions referred to in said paragraphs are set forth in Appendix A to Defendants' memorandum submitted on these motions, and respectfully refer to said provisions for their terms.

D. Defendants dispute the statements contained in paragraphs 11, 12, and 13, except acknowledge that the defendant Committees do conduct personal interviews of applicants in order to ascertain whether such applicants meet the statutory requirements for admission to the Bar, that applicants are required to furnish an affidavit of Character and Residence, and copies of the form for such affidavits are annexed as Exhibit B to the affidavits of Messrs. Freschi and Hennessy, submitted herewith; and Defendants agree that if Plaintiffs take no additional steps to process their applications for admission to the Bar, they cannot become members of the New York Bar.

Statement of Defendants Pursuant to General Rule 9(g)
68 Civ. 2917; 68 Civ. 2938

DEFENDANTS' STATEMENT

The following facts are not in dispute:

1. The present form of Statement and Questionnaire used in the First Judicial Department is annexed as Exhibit A to the affidavit of Theodore R. Freschi, except that questions 28 and 29(a) appearing on said form have been deleted.

2. The present form of Statement and Questionnaire used in the Second Judicial Department is annexed as Exhibit A to the affidavit of John F. Hennessy, except that questions 28 and 29(a) appearing on said form have been deleted.

3. The form of affidavit with respect to Character of applicants for admission to the Bar in the First Judicial Department is annexed as Exhibit B to the affidavit of Theodore R. Freschi.

4. The form of affidavit with respect to Character and Residence of applicants for admission to the Bar in the Second Judicial Department is annexed as Exhibit B to the affidavit of John F. Hennessy.

Respectfully submitted,

November 12, 1968

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

By

Assistant Attorney General
Attorney for Defendants

Opinion of the District Court for the Southern District of New York

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

February 17, 1969

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., *et al.*

v.

WADMOND, *et al.*.
STEPHEN MARTIN WEXLER, *et al.*

v.

The SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, *et al.*.

68 Civ. 2917, 2938.

Before FRIENDLY, *Circuit Judge*, and BONSAL and MOTLEY, *District Judges.*

FRIENDLY, *Circuit Judge*:

These two actions for injunctive and declaratory relief, invoking our jurisdiction, 28 U.S.C. § 1343(3), to enforce the Civil Rights Act, 42 U.S.C. § 1983, challenge the constitutional validity of procedures for admission to the New York bar, both generally and particularly as applied in

the First and Second Judicial Departments.[1] The plaintiffs in 68 Civ. 2938 are three candidates certified as having passed their bar examinations, the Columbia Law Students Guild, and the New York City Chapter of the National Lawyers Guild. The plaintiffs in 68 Civ. 2917 are the Law Students Civil Rights Research Council, Inc., an organization of some 1,500 law students with chapters at sixty law schools including four in New York City, and three law students who plan to apply for admission to the New York bar when eligible. Both actions are sought to be maintained as class actions on behalf of all persons seeking or planning to seek such admission. The defendants are the Appellate Divisions and their Justices and the Committees on Character and Fitness for the First and Second Judicial Departments and their members.

Section 90(1) of the New York Judiciary Law, McKinney's Consol. Laws, c.30, provides

> Upon the state board of law examiners certifying that a person has passed the required examination, or that the examination has been dispensed with, the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided that he has in all respects complied with the rules of the court of

[1] The state of New York is divided by law into four judicial departments. N.Y. Const. Art. 6, § 4; Judiciary Law § 70. The First Department embraces the counties of New York and Bronx; the Second, the counties of Richmond, Kings, Westchester, Putnam, Dutchess, Orange, Rockland, Nassau, Suffolk, and Queens. Judiciary Law §§ 70, 140.

> appeals and the rules of the appellate divisions relating to the admission of attorneys.

This provision is implemented by Article 94 of the Civil Practice Law and Rules enacted in 1962, which adopts rules previously promulgated by the Justices of the Appellate Divisions. The rules [2] comprising Article 94 direct the appellate division in each judicial department to appoint a committee to investigate the character and fitness of each applicant for admission, R. 9401; prescribe that "unless otherwise ordered by the appellate division, no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission," R. 9404; and authorize such committee, "subject to the approval of the justices of the appellate division, * * * to prescribe and from time to time to amend a form of statement or questionnaire on which the applicant shall set forth all the information and data required by the committee and the appellate division justices, including specifically his present and such past places of actual residence as may be required * * *, R. 9404. Rule 9406 directs:

> No person shall receive said certificate from any committee and no person shall be admitted to practice as an attorney and counselor at law in the courts of this state, unless he shall furnish satisfactory proof to the effect:
>
> 1. that he believes in the form of the government of the United States and is loyal to such government * * *

The complaints attack a number of these provisions as violating the First Amendment to the Constitution

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[2] Provisions of the Civil Practice Law and Rules which are denominated as Rules may be changed by the judicial conference of the state. See CPLR § 102 and Judiciary Law § 229.

as made applicable to New York by the Fourteenth. The statutory provisions, notably § 90(1) (a) of the Judiciary Law and the quoted portion of Rule 9406, are challenged as being so vague and impermissibly broad as to have a "chilling effect," see Dombrowski v. Pfister, 380 U.S. 479, 494, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965), on plaintiffs' exercise of their First Amendment rights. Rule 9406 is challenged as allowing investigation into mere beliefs and denial of admission for them and as placing on applicants a burden of proof they cannot constitutionally be made to bear. The questionnaires prescribed by the two committees are criticized as requiring disclosure of acts and associations beyond the scope of proper inquiry. Believing that substantial constitutional issues had been tendered, Judge Motley requested the Chief Judge of the Circuit to invoke a court of three judges, 28 U.S.C. §§ 2281, 2284, and this was done. Judge Motley reserved judgment on the motion made by plaintiffs in 68 Civ. 2917 to consolidate the two suits pursuant to Fed.R.Civ.P.42(a); we grant the motion and have considered the cases together. Plaintiffs have sought summary judgment or, if that not be granted, a preliminary injunction and discovery. The defendants have moved for dismissal of the complaint or, in the alternative, or dismissal so far as the complaint relates to the statutes[3] and remission of the issues concerning the questionnaires to Judge Motley.

I.

Before proceeding to the merits we must examine claims made with respect to the standing of the plaintiffs, the suability of the defendants, the failure to join the Court of Appeals or its members, and the desirability of abstention.

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[3] We shall use that term as embracing the Rules, see note 2.

With respect to the individual plaintiffs, defendants admit the standing only of the three who have passed the bar examination. They contend, however, that, so far as concerns the statutes, these three have no need for equitable relief since, if the character committee should refuse them certification on an impermissible ground, they can obtain an adequate remedy by applying to the appellate division and, if the state courts persist in refusal, by seeking review in the Supreme Court; and that, so far as concerns the questionnaires, their objections are at most a matter for a single judge since each questionnaire is effective only in part of the state. We find it unnecessary to evaluate this argument.[4] For we believe the three plaintiffs who are law students intending to apply for admission have standing to seek equitable relief since they have set themselves apart from the public at large sufficiently to have standing to protest statutes governing admission to the bar that may inhibit exercise of First Amendment rights during the period of their study. Cf. Gart v. Cole, 263 F.2d 244, 250 (2 Cir.), cert. denied, 359 U.S. 978, 79 S.Ct. 898, 3 L.Ed.2d 929 (1959); Gonzalez v. Freeman, 118 U.S.App.D.C. 180, 334 F.2d 570 (1964); Overseas Media Corp. v. McNamara,

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[4] Defendants also argue that the plaintiffs who have passed the examination have, by presenting their certificates to the appellate division and obtaining questionnaires from the character committee, commenced "proceedings in a State court" within the anti-injunction statute, 28 U.S.C. § 2283, and that the grant of an injunction would violate that statute. Even if this were true, it would not prevent us from granting an injunction in favor of the law students. Further, we see no merit in the argument, quite apart from any question whether the Civil Rights Act creates an exception to § 2283. The purpose of the anti-injunction statute is to prevent a state court defendant from invoking the aid of a federal court to block an action instituted against him—not to prevent a state court applicant from seeking federal aid to eliminate what he considers an unconstitutional roadblock created by the state.

128 U.S.App.D.C. 48, 385 F.2d 308 (1967); Davis, Standing: Taxpayers and Others, 36 U.Chi.L.Rev. 601, 617-628 (1968). Since these students raise a substantial constitutional question with respect to at least one of the statutes, a court of three judges is required for that purpose; the argument that attack on the questionnaires should be remitted to a single district judge will be examined later in this opinion. We also have no occasion now to consider the standing of the various organizations that have joined in the complaints.

In considering whether an injunction or a declaratory judgment should be issued, we start from the principle of Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), that when officers administering a state statute act in a manner that exceeds constitutional limits, they have no claim to sovereign immunity. Against this is the equally well settled principle that a judge exercising his judicial function is not liable for damages under 42 U.S.C. § 1983. Pierson v. Ray, 386 U.S. 547, 553-555, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967).

While the interest served by the latter principle in making the state judge free "to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants," without "fear that unsatisfied litigants may hound him with litigation charging malice or corruption," Pierson v. Ray, supra, 386 U.S. at 554, 87 S.Ct. at 1218, is an important one, its applicability to an injunction is by no means clear. See United States v. McLeod, 385 F.2d 734, 738 (5 Cir. 1967) (Wisdom, J.). We fail to perceive what interest would be served by holding federal courts to be powerless to enjoin state officers from acting under a statute that allegedly deprives citizens of rights protected by the Civil Rights Act or promulgating regulations that are alleged to have that result simply because some of them are robed and others have been appointed by

those who are. Rather it would seem anomalous that while federal courts could entertain a complaint similar to the plaintiffs' if made with respect to other licensed professions, such as medicine or accountancy, they are powerless with respect to admission to the bar. The grant of injunctive relief in a case like this would not have the *in terrorem* effect on state judges that the threat of a subsequent damage action would have; rather, it would furnish a definitive ruling on a point of federal law for their future guidance, and, as shown above, fn. 4, would not infringe the policy expressed in the federal anti-injunction statute, 28 U.S.C. § 2283, proscribing injunctions that would stay "proceedings in a State court." The criteria set forth in Dombrowski v. Pfister, supra, for the grant of the extraordinary relief of injunction against the enforcement of a state statute are alleged to be present here. Plaintiffs do not challenge a state court's disposition of an individual case, but attack as "overly broad and vague regulations of expression," see 380 U.S. at 490, 85 S.Ct. at 1123, the rules and regulations promulgated and administered by the appellate divisions and their delegates. The alleged infringement of First Amendment rights of law students cannot be dissipated by the processing of particular individuals' applications for admission to the bar. These factors, which were "controlling on both the exercise of equitable power and the abstention issue" in Dombrowski, see Cameron v. Johnson, 381 U.S. 741, 755, 85 S.Ct. 1751, 14 L.Ed. 2d 715 (1965) (White, J., dissenting), make appropriate our consideration of equitable relief even though the defendants would be immune from liability in damages for their administration of the challenged procedures, see Saier v. State Bar of Michigan, 293 F.2d 756 (6 Cir.), cert. denied, 368 U.S. 947, 82 S.Ct. 388, 7 L.Ed.2d 343 (1961); Gately v. Sutton, 310 F.2d 107 (10 Cir. 1962); Clark v. Washington, 366 F.2d 678 (9 Cir. 1966) (judges and their delegates immune

for roles in disbarment proceedings). To hold otherwise would be to leave without a remedy a significant class of the deprivations of federal rights under color of state law, that Congress intended the federal courts to redress under 42 U.S.C. § 1983 and 28 U.S.C. § 1343.

We likewise see no force in defendants' argument that the suits should be dismissed, pursuant to Fed. R.Civ.P. 19, for failure to join the Court of Appeals or its members. While plaintiffs' attack on the "statutory scheme" governing admission to the bar takes in a Rule of the Court of Appeals, Rule VIII, the involvement of that rule does not necessitate joinder of its authors any more than an attack on the application of a statute requires joinder of the legislature. Moreover, the rule, adopted to implement Judiciary Law § 90, is attacked only for failing to furnish standards more precise than those found in § 90 and CPLR Article 94, and thus failing to rescue the procedure from the defects that allegedly inhere in the latter provisions. Section 90 and Article 94 have been enacted by the Legislature, and they place actual administration in the appellate divisions and their delegates, the committees on character and fitness, not in the Court of Appeals. There is no practical obstacle to adjudication of the constitutionality of this procedure in the absence of the Court or its members. Contrast Association For the Preservation of Freedom of Choice, Inc. v. Wadmond, 215 F. Supp. 648, 651-652 (S.D.N.Y.1963).

With respect to abstention, defendants have not made clear what debatable issues of construction state proceedings could resolve. Their contention is rather that admission to the bar is so peculiarly a matter of state concern that its resolution should be left to the state courts, subject, of course, to review by the Supreme Court. But that Court has given short shrift to similar claims in matters, equally of state concern, such as education, McNeese v. Board of Education, 373 U.S. 668, 83 S.Ct. 1433, 10

L.Ed.2d 622 (1963), and state employees, Baggett v. Bullitt, 377 U.S. 360, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964); Keyishian v. Board of Regents, 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967).

We therefore proceed to the merits.

II.

We need not tarry long over the claim that the requirement of § 90(1) (a) of the Judiciary Law that entrance to the bar shall be allowed only to a person who "possesses the character and general fitness requisite for an attorney and counsellor-at-law" is impermissibly vague. We perceive no significant distinction between this and California's requirement of "good moral character," duplicated in many other states, which the Court said in Konigsberg v. State Bar of California, 366 U.S. 36, 40-44, 81 S.Ct. 997, 6 L.Ed.2d 105 (1961), could not "well be drawn in question." Indeed, New York's requirement is somewhat more definite in specifying that the character traits required are those directly related to suitability for the practice of law. Once it is granted that the state can constitutionally require something more of applicants for admission to the bar than absence of the kind of criminal record that would warrant expulsion, as *Konigsberg* must be taken to have decided, the state must perforce use language of some generality. Such words, like others familiar in our law, acquire content through years of administration, see, e.g., Re Peters, 221 App.Div. 607, 225 N.Y.S. 144, aff'd, 250 N.Y. 595, 166 N.E. 337, rearg. denied, 252 N.Y. 572, 170 N.E. 148 (1927) (admission denied because of disbarment in another state); Re Greenblatt, 253 App.Div. 391, 2 N.Y.S.2d 569 (1938) (admission denied because of misrepresentations to character committee about applicant's dismissal from college for misconduct); Application of Cassidy, 268 App.Div. 282, 51 N.Y.S.2d 202, aff'd on rehearing, 270 App.Div. 1046, 63 N.Y.S.2d 840, aff'd, 296 N.Y. 926, 73 N.E.2d 41 (1944)

(admission denied because applicant urged creation of armed units for forceful overthrow of government and made inconsistent statements indicating lack of veracity). See also Schware v. Board of Bar Examiners, 353 U.S. 232, 247, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) (concurring opinion of Mr. Justice Frankfurter). Plaintiffs' affidavits and briefs are eloquently silent about instances where New York has unjustifiably denied admission for lack of "the character and general fitness requisite for an attorney and counsellor-at-law."

III.

Rule 9406 demands more discussion. Plaintiffs' initial criticism is procedural. They say the requirement that the applicant "shall furnish satisfactory proof" of belief in our form of government and loyalty to it unconstitutionally imposes a burden of proof in violation of Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958). We think that case fairly distinguishable on two grounds: The statute condemned in *Speiser* applied to all veterans claiming property tax exemption, and the Court differentiated loyalty oaths required of "a limited class of persons in or aspiring to public positions by virtue of which they could, if evilly motivated, creates serious danger to the public safety." 357 U.S. at 527, 78 S.Ct. at 1343. Lawyers, who are officers of the courts, fit the latter rubric. In Konigsberg v. State Bar, *supra,* 366 U.S. at 54, 81S.Ct. 997, the Court noted this distinction. Rule 9406 is also sustainable on the other ground taken in *Konigsberg,* 366 U.S. at 55, 81 S.Ct. 997, namely, the lack of "unequivocal indication" that it imposes a true burden of proof as distinguished from a burden of coming forward with evidence. We see no reason why New York may not impose the latter with respect to a subject concerning which the applicant has detailed knowledge but the committees would be required to make extensive investigation.

Plaintiffs' substantive attack is that Rule 9406 has the breadth branded as unconstitutional in such important recent cases as Baggett v. Bullitt, *supra*, 377 U.S. 360, 84 S.Ct. 1316; Elfbrandt v. Russell, 384 U.S. 11, 86S.Ct. 1238, 16 L.Ed.2d 321 (1966); and Keyishian v. Board of Regents, *supra*, 385 U.S. 589, 87 S.Ct. 675 (1967). When one examines the decisions, in contrast to culling phrases from them, they are plainly distinguishable. What the Court found defective in *Baggett* about the teachers' oath specified in the Washington laws of 1931[5] was the part exacting a promise that the affiant would "by precept and example promote respect for the flag and the institutions of the United States of America and the State of Washington, reverence for law and order and undivided allegiance to the government of the United States." The Court held that to require teachers to make so broad a promise provided no "ascertainable standard of conduct" and required "more than a State may command." 377 U.S. at 372, 84 S.Ct. at 1322. The defect in *Elfbrandt* was not the oath required of state employees, see 384 U.S. at 12, 86 S.Ct. at 1239, but the statute subjecting to prosecution for perjury and to discharge from public office anyone who during his "term of office or employment knowingly and willfully becomes or remains a member of the communist party of the United States or its successors or any of its subordinate organizations or any other organization having for one of its purposes the overthrow by force or violence of the government of the state of Arizona or any of its political subdivisions." This was condemned as including "those

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[5] "I solemnly swear (or affirm) that I will support the constitution and laws of the United States of America and of the State of Washington, and will by precept and example promote respect for the flag and the institutions of the United States of America and the State of Washington, reverence for law and order and undivided allegiance to the government of the United States." 377 U.S. at 361-362, 84 S.Ct. at 1317.

who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities * * *," 384 U.S. at 17, 86 S.Ct. at 1241, a position foreshadowed by Scales v. United States, 367 U.S. 203, 81 S.Ct. 1469, 6L.Ed.2d 782 (1961). See also United States v. Robel, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967); Haskett v. Washington, 294 F.Supp. 912 (D.D.C. 1968). Finally, what the Court struck down in *Keyishian* was a "complicated plan," 385 U.S. at 601, 87 S.Ct. 675, imposing a variety of ill defined restraints on teachers in New York's public schools and colleges.

Rule 9406 is not an oath; the oath required to be taken upon admission to the bar, Judiciary Law § 466, is the "constitutional oath" New York Constitution, Art. XIII, § 1, "that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability." The constitutionality of this oath is established by Knight v. Board of Regents, 269 F.Supp. 339 (S.D.N.Y. 1967), aff'd per curiam 390 U.S. 36, 88 S.Ct. 816, 19 L.Ed.2d 812 (1968). Neither does Rule 9406 hang *in terrorem* over persons admitted to the bar, like the statutes condemned in *Elfbrandt* and *Keyishian*; it goes to belief at the time of admission only. The claim is rather that the alleged undue breadth of the Rule will have an unconstitutionally inhibiting effect on persons who contemplate seeking admission to the bar, notably law students, since they will fear lest becoming members in controversial organizations or engaging in protests will be taken to evidence lack of belief in the form of government of the United States or disloyalty to it.

If one assumes a proper implementation of Rule 9406, plaintiffs' apprehensions seem unwarranted. The Rule does not prescribe a formula to which the applicant must adhere but is rather a direction to the committees and the appellate divisions to guide them in performance of their

functions under the statutory scheme. It instructs these bodies, before forwarding an applicant to take the constitutional oath, to satisfy themselves through analysis of the factual data before them of his belief in and loyalty to the government he will swear to support. Defendants interpret this command as directing them "to test whether applicants for admission can truly subscribe to the 'constitutional oath of office' "; they read "the form of the government of the United States" to mean exactly what comes within the oath of support, and "loyalty to such government" to mean ability to take the oath in good faith. This construction of the statute by the very agencies charged with its administration is commended by reason. Since those who authored Rule 9406 were quite as aware as we are that the First Amendment lies at the very heart of our "form of government," we should not lightly suppose they had any idea that applicants should be refused admission to the bar for exercising their constitutionally guaranteed rights to freedom of speech, peaceable assembly and petition for redress of grievances. Since they were likewise entirely aware that the Constitution contains Article V, providing for amendment, we will similarly not suppose they intended admission to be refused to applicants who advocate amendment, even very radical amendment, by lawful means. Accepting defendants' construction, as we do, we could hold Rule 9406 to be invalid on its face only if the Constitution makes it impermissible to give any scrutiny to whether an applicant can honestly take a lawfully required oath.

We do not read Bond v. Floyd, 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed.2d 235 (1966), as prohibiting all inquiry to that end. The Court there recognized that the state need not seat a legislator who "swears to an oath *pro forma* while declaring or manifesting his disagreement with or indifference to the oath." 385 U.S. at 132, 87 S.Ct. at 347. If the state may consider declarations or manifestations made con-

temporaneously with the taking of the oath, by the same token it may make a reasonable inquiry whether the oath taker is not in fact engaging in a solemn farce. The holding was rather that the information gathered by the special committee of the Georgia legislature had no sufficient tendency to negate Mr. Bond's position that he could conscientiously take the oath.

We therefore hold that Rule 9406 is not unconstitutional if implemented in accordance with its purpose. Before we proceed to plaintiffs' contentions concerning the questionnaires for its application prescribed by the Committees on Character and Fitness for the First and Second Departments, we must consider whether that subject is appropriate for adjudication by a court of three judges, 28 U.S.C. § 2281, or should be remitted to a single district judge.

IV.

The relevant statute, 28 U.S.C. § 2281, instructs, in "deceptively simple" terms, see Sardino v. Federal Reserve Bank of New York, 361 F.2d 106, 114 (2 Cir.), cert. denied, 385 U.S. 898, 87 S.Ct. 203, 17 L.Ed.2d 130 (1966):

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

The defendants apparently concede that a court of three judges would be required if the character committees of

all four judicial departments had prescribed the same questionnaire, or even if they had prescribed different ones but all were here attacked on similar grounds. The concession is well made since, apart from other possible bases for applicability of the statute, the attack would be upon "an order made by an administrative board or commission acting under [State] statutes," cf. Lathrop v. Donohue, 367 U.S. 820, 824-827, 81 S.Ct. 1826, 6 L.Ed.2d 1191 (1961) (court order integrating state bar a "statute" within 28 U.S.C. § 1257), and it has long been settled that the ineptness of the 1913 amendment, 37 Stat. 1013, which added the reference to administrative orders but neglected to alter correspondingly the words "upon the ground of the unconstitutionality of such statute" should be overlooked. Oklahoma Natural Gas Co. v. Russell, 261 U.S. 290, 292, 43 S.Ct. 353, 67 L.Ed. 659 (1923). But defendants contend that since the questionnaires under attack cover only two of the four departments, the case comes within the judge-made exception to § 2281 excluding controversies not of statewide importance. See Ex parte Collins, 277 U.S. 565, 567-569, 48 S.Ct. 585, 72 L.Ed. 990 (1928); Ex parte Public Nat'l Bank, 278 U.S. 101, 49 S.Ct. 43, 73 L.Ed. 202 (1928); Wilentz v. Sovereign Camp, 306 U.S. 573, 59 S.Ct. 709, 83 L.Ed. 994 (1939); Rorick v. Board of Com'rs, 307 U.S. 208, 59 S.Ct. 808, 83 L.Ed. 1242 (1939); Moody v. Flowers, 387 U.S. 97, 87 S.Ct. 1544, 18 L.Ed.2d 643 (1967); Hatfield v. Bailleaux, 290 F.2d 632 (9 Cir. 1961); D. Currie, The Three-Judge District Court in Constitutional Litigation, 32 U.Chi.L.Rev. 1, 31-34, 55 (1964); D. Currie, Federal Courts 535-37 (1968).

We disagree for several reasons, any one of which would suffice:

The first ground lies in the difference between an attack on the order of an administrator as such and on the statute as applied by him. The distinction admittedly is elusive since, on the one hand, as said in Phillips v. United States,

312 U.S. 246, 252, 61 S.Ct. 480, 484, 85 L.Ed. 800 (1941), "some constitutional or statutory provision is the ultimate source of all actions by state officials," and, on the other, no statute is self-enforcing. Whatever the difficulties of articulation, there is still a perceptible difference between a challenge to a governor's "single, unique exercise" of power, 312 U.S. at 253, 61 S.Ct. at 484, under a statute of unquestioned validity empowering him generally to call out the national guard in case of war or "any forcible obstructing of the execution of the laws or reasonable apprehension thereof, and at all other times he may deem necessary," and the continuing administrative implementation of a statute, itself under attack, which is constitutional if applied in one way and not if in another. To put the point in a slightly different way, if the administrator is interpreting legislative policy, even a local application requires three judges; if he is making policy under a delegation, his local action can be tested by a single judge. See for further discussion Sardino v. Federal Reserve Bank, *supra,* 361 F.2d at 115; D. Currie, *supra,* 32 U.Chi.L.Rev. at 37-55; D. Currie, Federal Courts 534-35 (1968).

The second ground is that the actions of the two character committees under authority of the appellate divisions are not truly "local" within the teaching of the cases we have cited. It is true that the regulations of the committee in each department bear directly only on applicants who, being residents there, are seeking admission through the process established for them. But the effect of admission or denial is state-wide; admission in one department is the key to lawful practice throughout the State.

Thirdly, even if the questionnaires should properly be regarded as local administrative action, we would nevertheless retain jurisdiction as a three-judge court. The Supreme Court, in Louisville & N. R. R. v. Garrett, 231 U.S. 298, 303-304, 34 S.Ct. 48, 58 L.Ed. 229 (1913), expressly upheld the jurisdiction of the three-judge panel over nonconstitutional questions affecting the validity of the orders

also attacked on constitutional grounds. In Florida Lime & Avocado Growers, Inc. v. Jacobsen, 362 U.S. 73, 80-81, 80 S.Ct. 568, 4 L.Ed.2d 568 (1960), the Court restated the *Garrett* holding in an approving dictum, while deciding that the joinder of a nonconstitutional claim did not obviate the need for three judges on the constitutional one itself. Although both *Garrett* and *Lime Growers* concerned nonconstitutional attacks upon the same statute or order whose constitutional challenge required three judges, the same reasoning should apply when one attack is on the statute and the other on an order issued thereunder. In either case the overlap of evidence and argument is likely to be considerable. The policy of efficient use of judicial effort was pushed much further than this in United Mine Workers of America v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 16L.Ed.2d 218 (1966), where there was an encroachment upon state interests in determining issues not independently within federal cognizance. Since some issues raised by the complaints plainly call for three judges, there is not the compelling argument for judicial economy that exists when dissolution of the panel at the outset would save the energies of the two judges relieved from further duty. Furthermore to consign the questionnaires to a single judge would entail the prospect of separate appeals, one to the Supreme Court and the other to the Court of Appeals.

In Zemel v. Rusk, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965), the Supreme Court entertained an appeal from three judges in a case we cannot distinguish from our own. The calling of three judges were there upheld because the plaintiff attacked the passport statute on the ground of unconstitutional delegation; the court below and the Supreme Court both considered, in addition, the contention that the Secretary of State's regulations under that statute were invalid. Perceiving the situation before it as no different from where the additional claim is a nonconstitutional at-

tack on the same statute, the Supreme Court quoted from *Lime Growers* to establish that joining claims not themselves within the three-judge statutes does not dispense with the need for three judges for the consideration of all. See also Kurland, The Romero Case and Some Problems of Federal Jurisdiction, 73 Harv.L.Rev. 817, 838-45 (1960).

Finally, even if all the foregoing grounds should be wrong, and of course we do not think they are, we would nevertheless, in the exercise of discretion, continue to act together as regards the questionnaires. "Although a single district judge is without power to act in a case requiring three judges, the opposite is not true." Swift & Co. v. Wickham, 230 F.Supp. 398, 410 (S.D.N.Y. 1964), appeal dismissed for want of jurisdiction, 382 U.S. 111, 86 S.Ct. 258, 15 L.Ed.2d 194 (1965), aff'd, 364 F.2d 241 (2 Cir. 1966), cert. denied, 385 U.S. 1036, 87 S.Ct. 776, 17 L.Ed.2d 683 (1967). When the three-judge court has heard the entire case and lack of jurisdiction over one issue is at best debatable, sound policy calls for the three judges to decide that also, since a return of the issue to a single judge "would result in an invalid order if the return was erroneous, whereas the only consequence of erroneous retention of jurisdiction by the three-judge court is that the appeal should be taken to the Court of Appeals rather than to the Supreme Court, an uncertainty against which the plaintiffs may protect themselves by timely appeals to both courts." *Id.*

V.

The questionnaires in use in the two departments have been the subject of recent changes which demonstrate that the Committees on Character and Fitness and the Justices of the Appellate Divisions are well aware of the need to bring them in line with developing concepts of First Amendment rights. The complaint in 68 Civ. 2938 attacked ques-

tionnaires issued to plaintiffs Wexler and Kaimowitz early in 1968 but these had been altered by the two departments in May before the actions were brought. After the commencement of the actions the appellate divisions deleted questions, set forth in the margin,[6] which would have raised exceedingly serious problems under Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960). See also Schneider v. Smith, 390 U.S. 17, 88 S.Ct. 682, 19 L.Ed.2d 799 (1968).

The questions to which most strenuous objection is made are the following:

> 26. Have you ever organized or helped to organize or become a member of or participated in any way whatsoever in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means? ———— If your answer is in the affirmative, state the facts below.
>
> 27(a) Do you believe in the principles underlying the form of government of the United States of America?

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[6] "28(a) Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or social service? ———— If so, state fully.

"(b) If you engaged in extracurricular activities (athletic, dramatic, debating, club, committee, administration, etc.) in college, indicate approximate amount of time spent and responsibility involved.

"29(a) Give the names, addresses, objects and period of membership in each and every club, association, society or organization of which you are or have been a member other than those associated with and recognized by accredited schools and colleges."

(b) Can you conscientiously, and do you, affirm that you are, without any mental reservation, loyal to and ready to support the Constitution of the United States? ————

Taking these in reverse order, we fail to see what valid objection can be made to question 27(b). This differs from the New York Constitutional oath sustained in Knight v. Board of Regents, *supra*, 269 F.Supp. 339, aff'd, 390 U.S. 36, 88 S.Ct. 816, 19 L.Ed.2d 812, only in the inclusion of two additional phrases, "without any mental reservation" and a declaration of loyalty. The former phrase is included in the oaths all of us have taken as judges, and we cannot perceive any proper reason why any applicant for admission to the bar should cavil over it. We likewise find it impossible to see why requiring a future lawyer to declare his loyalty to the Constitution should be deemed objectionable when a promise to support it is not.[7] The suggestion that a prospective lawyer would fear that a declaration of loyalty to the Constitution would prevent his criticizing acts of the Government does not require discussion.

Question 27(a) is alleged to be impermissibly vague. It is claimed, for example, that an applicant might think he could not respond in the affirmative if he did not believe in the electoral college or a bicameral legislature. There is enough substance to this objection that we think the question should be eliminated or altered. The phrase "principles underlying the form of government," as distinguished from the simpler phrase used by Rule 9406 in addressing the appellate divisions and the committees, might be understood by an applicant to include many "principles" of a lower order than the essentials, democratic government and change by lawful methods. One who favored drastic reforms, albeit through constitutional means, might perhaps

[7] See also the oath which the Constitution requires of the President to "preserve, protect and defend" it. Art. II, § 1.

feel unable conscientiously to answer with a simple "yes"; yet the format of the question affords no additional space for explanation and the word "principles" is so vague as to create a problem even if opportunity for explanation were afforded. The question thus may share the defect of the oath in Whitehill v. Elkins, 389 U.S. 54, 88 S.Ct. 184, 19 L.Ed.2d 228 (1967), which the Supreme Court found capable of being read to require the affiant to disclaim any desire to "alter" the government by peaceful "revolution." It seems unnecessary to require such an imprecise declaration from an applicant for admission to the bar. Defendants say the question is intended merely to be "subsidiary to and supportive of" the constitutional oath; while we have held that the state can permissibly make some inquiry into the applicant's ability sincerely to take the oath, this purpose can be served by more circumscribed questions, such as 27(b) and the various factual questions contained throughout the questionnaires. Question 27(a) should thus be deleted or rephrased to remove the imprecision we have noted.

Question 26 also raises a difficult problem. Plaintiffs rely on cases such as *Baggett, Elfbrandt,* and *Keyishian,* cited in section III of this opinion, and also on Shelton v. Tucker, *supra,* 364 U.S. 479, 81 S.Ct. 247, and Schneider v. Smith, *supra,* 390 U.S. 17, 88 S.Ct. 682. Defendants distinguish the former as involving statutes that set up a bar to employment or decreed a termination of it, all in the field of teaching where the First Amendment dictates "particular concern for the safeguarding of academic freedom," Haskett v. Washington, *supra,* as contrasted to the mere inquiry here. They distinguish *Shelton* and *Schneider* upon the breadth of the questions asked. Defendants assert in the first instance that the principle remains sound that in order to protect "some interest clearly within the sphere of governmental concern" a state may "deny positions to persons supposed to be dangerous because the position might be used to the

detriment of the public." Speiser v. Randall, *supra*, 357 U.S. at 527, 78 S.Ct. at 1343. In Gerende v. Board of Supervisors, 341 U.S. 56, 71 S.Ct. 565, 95 L.Ed. 745 (1961), for example, the Court sustained a requirement that a candidate for public office swear that he was not engaged " 'in one way or another in the attempt to overthrow the government *by force or violence*,' and that he is not knowingly a member of an organization engaged in such an attempt." Further, although what is within the state's power of exclusion is necessarily within its power of inquiry, defendants argue that the latter is broader since the state is entitled to information from which it may develop that a person has in fact engaged in conduct justifying a bar to office that he has not been willing to admit. With respect to the scope of inquiry, Question 26 does not approach the requirement struck down in *Shelton* that every associational tie be disclosed, a requirement the Court held to be too indiscriminate in its sweep. The decisions in Beilan v. Board of Public Education, 357 U.S. 399, 78 S.Ct. 1317, 2 L.Ed.2d 1444 (1958); Lerner v. Casey, 357 U.S. 468, 78 S.Ct. 1311, 2 L.Ed.2d 1423 (1958); Nelson v. County of Los Angeles, 362 U.S. 1, 80 S.Ct. 527, 4 L.Ed.2d 494 (1960); Konigsberg v. State Bar of California, *supra*, 366 U.S. 36, 81 S.Ct. 997, 6 L.Ed.2d 105 and In re Anastaplo, 366 U.S. 82, 81 S.Ct. 978, 6 L.Ed.2d 135 (1961), demonstrate that the Constitution does not prohibit a state from *asking* a public official or a candidate for admission to the bar whether he was ever a member of the Communist Party or, as in the *Nelson* case, of other organizations known to the member to advocate violent overthrow of the government.

The most obvious problems with Question 26 are the parenthetical past-tense verbs. While the draftsman probably intended these to relate to the period of the applicant's membership, this is not made clear; the question could be read as requiring an applicant to report membership in an

organization that advocated overthrow of the Government of the United States in 1860 but now would defend every syllable of the Constitution. The question should be corrected to clarify that the organization's teaching or advocacy of violent overthrow must have coincided in time with applicant's membership—a correction to which we cannot conceive the defendants would object. The next issue is whether the question must be further limited to cases where the applicant knew of the teaching or advocacy. Defendants do not assert they could constitutionally exclude applicants unless this was shown; their contention is rather, as noted above, that they should be permitted to frame their inquiry more broadly, that an applicant making an affirmative answer will be free to qualify this, and that the committees and the appellate divisions will then be in a position to determine the truth of the disclaimers. While there is force in this, no Supreme Court decision has gone beyond sustaining inquiry into membership in organizations known to the member to advocate forceful or violent overthrow, or in the Communist Party whose advocacy is evidently deemed a matter of common knowledge. We are not disposed to sanction inquiries of greater scope. Although Sweezy v. New Hampshire, 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957), could be distinguished as involving a sweeping legislative inquiry not limited to public employees or applicants for admission to the bar, it indicates the Court's aversion to questions concerning associations in the absence of *scienter*. The prospect of having to respond to an inquiry like Question 26 might have a deterring effect on exercise of the constitutionally protected right of association, and this can be justified only when "the subordinating interest of the State" is "compelling," Sweezy v. New Hampshire, *supra*, 354 U.S. at 265, 77 S.Ct. at 1219 (concurring opinion of Frankfurter, J.)—a test applied in Bates v. Little Rock, 361 U.S. 516, 524, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960) and NAACP v. Button, 371 U.S. 415, 439, 83 S.Ct. 328, 9 L.Ed.2d

405 (1963). The state's interest in informing itself of the prior associations of candidates for the bar with subversive organizations can be adequately protected by a question more narrowly phrased. See Nelson v. County of Los Angeles, *supra*, 362 U.S. at 2-3 & n. 1, 80 S.Ct. 527.

Plaintiffs also attack Question 31. In the First Department this reads:

> Is there any incident in your life not called for by the foregoing questions which has any favorable or detrimental bearing on your character or fitness? —— ———— If your answer is "Yes" state the facts.

In the Second Department the words "favorable or" are omitted. Plaintiffs contend that this catch-all has a serious *in terrorem* effect, especially in light of the directions at the head of the application:

> 1. This is a statement made under oath. Applicant's failure fully and accurately to disclose any fact or information called for by any question may result in the denial of the application for admission, or if applicant shall have been admitted before the discovery thereof, in the revocation of his license to practice law.

We agree. The committees and the appellate divisions should be able to frame specific questions adequate to elicit the information they need; indeed they have demonstrated in the 31 other questions what plaintiffs consider an excessive ability in that regard. We find no interest of the state sufficiently compelling to require an applicant to engage in the soul-searching of his entire past life demanded by Question 31.[8]

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[8] At the argument before us, David W. Peck, Esq., former Presiding Justice of the Appellate Division for the First Department, who appeared as counsel for the character committees, while contending Question 31 to be innocuous, expressed personal dislike for it and the opinion that there would not "be any great to-do about question 31."

We take a different view with respect to the last question requiring discussion in the text of this opinion:

> 32. (a) Have you read the Canons of Ethics adpoted by the American and New York State Bar Associations? ————
>
> (b) Will you conscientiously endeavor to conform your professional conduct to them? ————

The objection is to (b); plaintiffs contend that an applicant may conscientiously disagree with various Canons, which currently are being revised, and still deserve admission to the bar. We agree with that position but not with the conclusion plaintiffs draw from it. There is no vagueness here of the sort we found in Question 27(a); an applicant who has read the Canons knows just what standards he is being asked about. If he dissents from a particular Canon, he need only say so and explain why. We have been cited no evidence that such dissent on a reasoned basis would bar admission.

Finally, plaintiffs attack generally the practice of the committees of conducting individual personal interviews with applicants, at which, among other things, questions are posed "on the basis of the applicant's answers to the questionnaire." Plaintiffs allege that the scope of this questioning is sometimes so broad as to constitute an unwarranted invasion into the applicant's personal and political privacy. We do not understand plaintiffs to deny that a personal interview can be a permissible and very helpful aid to the committees in judging fitness for admission to the bar. Rather, their complaint goes to the scope of interviews conducted at a time when the questionnaires included inquiries since deleted or here disapproved by us. We have no reason to assume that as the scope of the committees' written in-

quiry is contracted, there will not be a similar adjustment in the focus of their spoken questions.[9]

VI.

We must now consider the appropriate disposition in light of the foregoing discussion. While we have power to issue an injunction against use of the questionnaires until Questions 26, 27(a) and 31 are omitted or rephrased and against resumption of use of the questions that have been discontinued, see, e.g., fn. 6, we find no immediate occasion for

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[9] Plaintiffs also challenge Questions 19-22, which call for information concerning the applicant's registration for Selective Service, rejection for and discharge from military service, and charges or complaints during military service. We do not understand plaintiffs to deny that all these are matters of public record, which, however, the committees could obtain only at great trouble and expense. It is not unreasonable for them to save this expense by drawing upon the applicant's personal knowledge. In reply briefs plaintiffs complain of a requirement, allegedly made by the Committee on Character and Fitness of the Second Department, that an applicant authorize the Clerk of his Local Board to allow members and staff of the Committee and the Appellate Division to have unrestricted access to his entire file. Although we would entertain considerable doubt about the propriety of this, we have not passed upon it since it was not alleged in the complaints or affidavits.

The complaints do raise question about the committees' requirement that applicants obtain and submit affidavits from third persons attesting to their good moral character. The forms of these affidavits have recently undergone radical curtailment. The First Department's current form says nothing about home visits by the affiant, and the Second Department's does not require the affiant to aver that he has visited the applicant's home but merely to say whether or not he has. While the latter provision is asserted to be an invasion of the applicant's personal privacy forbidden by Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), and Camaro v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967), those cases are so remote from the issue as not to warrant discussion.

doing so. Although "the court's power to grant injunctive relief survives discontinuance of the illegal conduct," United States v. W. T. Grant Co., 345 U.S. 629, 633, 73 S.Ct. 894, 897, 97 L.Ed. 1303 (1953), a court is not required to award it, as that case demonstrates. Counsel for the character committees emphasized at the argument that "these State Courts are not stiff-necked about this thing." Considerations of comity to respected fellow-judges suggest they should be afforded a reasonable opportunity to reflect on our conclusions and perhaps take action that may obviate any occasion for an injunction. Law students will not suffer any serious chill during this brief interval, when the ultimate result is so clear. We believe also that if the three plaintiffs who have passed the examinations and have refused to fill out the questionnaires should decline to answer Questions 27(a) and 31 and answer Question 26 only as limited to membership in organizations known to them to be then teaching or advocating overthrow of the Government by force or violence, they would not find obstacles in their way; if our expectation should prove unfounded, they may apply to us for relief.

We shall therefore hold all motions until such date, not later than ninety days from the entry of this opinion, when counsel for the defendants shall report in writing what action, if any, the appellate divisions have taken. Such report shall be served upon plaintiffs' counsel; within twenty days thereafter, they may, if so advised, serve and file appropriate papers with respect to what further relief, if any, they deem required; the defendants shall answer within fifteen days. If counsel desire an opportunity for further argument, we will assign a date.

It is so ordered.

MOTLEY, District Judge (concurring in part, dissenting in part.)

In these consolidated cases plaintiffs challenge, on First and Fourteenth Amendment grounds, certain New York

statutes which contain the criteria for determining eligibility for admission to the bar.[1] One of these statutes provides that an applicant shall be admitted if the admitting court is satisfied that he "possesses the character and general fitness requisite for an attorney and counselor-at-law." New York Judiciary Law, § 90. The second statute provides that the applicant shall be admitted if, in addition, he has "furnished satisfactory proof to the effect that he believes in the form of government of the United States and is loyal to such government." New York Civil Practice Law and Rules, Rule 9406. These statutes are attacked on the ground that they are unconstitutionally vague and broad, resulting in a chilling effect upon the exercise of First Amendment freedoms by law students and those awaiting admission to the bar after having passed the written examination required. This judge, applying the concepts of vagueness and broadness holds: 1) the first statute is constitutional, but its interpretation, implementation and application by the defendant courts and their respective character committees is unconstitutional; and 2) the second statute is unconstitutional on its face and as interpreted, implemented and applied by defendants.

There is a rule of the New York Court of Appeals which implements the first statute by providing that every applicant must produce before the character committee and file with it "evidence that he possesses the *good moral character* and general fitness requisite for" an attorney.[2] [Emphasis Added.] This must be shown by the affidavits of two

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[1] The New York statutory and regulatory provisions and procedures governing admission to the bar are similar to those in most other states. See generally Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957) and Konigsberg v. State Bar of California, 353 U.S. 252, 77 S.Ct. 722, 1 L.Ed.2d 810 (1957).

[2] New York Judiciary Law, Appendix, Rule VIII-1, Rules of the New York Court of Appeals for Admission of Attorneys.

reputable persons residing in the city or county in which the applicant resides, one of whom must be a practising attorney.[3] According to the rule, the affidavits "must state that the applicant is, to the knowledge of the affiant, a person of *good moral character* and must set forth in detail the facts upon which such knowledge is based."[4] [Emphasis Added]. The term "good moral character" is not defined. The rule further provides that such "affidavits *shall not be conclusive,* and the [admitting court] may make further examination and inquiry through its Committee on Character and Fitness or otherwise."[5] [Emphasis Added]. Finally, the rule provides that the admitting courts, which are the four appellate divisions of the New York Supreme Court, shall adopt such additional rules as they may deem fit with respect to the requirement that the applicant prove his good moral character and general fitness.[6]

I. *Statement of the Facts*

In order to recognize the full dimensions of the constitutional issues posed here, it is necessary to examine closely the manner in which the foregoing statutes and rules were interpreted, implemented and applied by the appellate divisions which are defendants here and their respective character committees. To implement the Court of Appeals rule, defendants prepared instructions for persons furnishing affidavits and the affidavit forms, copies of which are

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[3] *Id.*

[4] *Id.* Rule VIII-2.

[5] *Id.*

[6] *Id.* Rule VIII-4. This rule reads:

"The justices of the Appellate Division in each department shall adopt for their respective departments such additional rules for ascertaining the moral and general fitness of applicants as to such justices may seem proper."

attached to the original and amended complaints in the second action. The First Department's instructions advised affiants that their affidavits must "state that to the knowledge (or in the opinion) of the affiant the applicant is a person of good moral character", and must set forth "in detail the facts upon which affiant's knowledge of or opinion as to applicant's moral character is based." There is no definition of "good moral character" and the language of the statute, "character and general fitness requisite for an attorney and counsellor-at-law", is not used. The instructions additionally advised: "Affidavits covering home life should characterize family and home environment." There is no further amplification of this instruction. The Second Department combined its instructions with the affidavit form and entitled it: "Form for Affidavit of Character and Home Life." The affidavit form contained a series of questions to be answered by the affiants. These questions demonstrate the unconstitutionally vague and broad manner in which the first statute, Judiciary Law § 90, and the Court of Appeals Rule VIII was interpreted, implemented and applied by defendants. The exemplars are as follows:

> 7. Describe briefly your associations with the applicant, setting forth how such associations began, and indicate in what activities (business, scholastic, cultural, recreational, athletic, social or otherwise) you have participated with applicant. It is not a sufficient answer merely to repeat the above words in parentheses, but the *particular activities* should be specified.
>
> 9. What is your conclusion as to applicant's *moral* character? (Reserve details for next question)
>
> 10. Set forth in detail what you have *personally observed* in your associations with applicant which

leads you to the conclusion set forth under question 9, specifying, among other things, the moral qualities and personal traits observed in applicant's conduct, and his usual attitude toward those with whom he associates.

11. Have you visited applicant's

(a) parental home;

(b) marital home, if any;

(c) any other home or place of abode applicant may have had

(answer "Yes" or "No" to each subdivision).

12. (a) How often, approximately, during each week, month or year, have you visited the parental, marital or other home or place of abode of applicant?

("Frequently" or "often" or other indefinite statement is not a satisfactory answer. Note that in most cases visits will be less frequent than the contacts mentioned in Q. 8, above).

(b) During what years (stating approximate dates)?

(c) At what addresses (listing them specifically)?

(d) Do such visits still continue? If not, when did they cease, and for what reason?

13. Have you on such visits met and conversed with:

(a) Applicant;

(b) The members of his family or household? If not with all, with which members?

14. (a) With what persons has the applicant lived during each period of your association with him in his home?

(If during period or periods covered by answer, applicant has lived with family, enumerate the members of the family during each period. If, during any period of association, he has lived apart from his family, enumerate the persons, if any, with whom he has lived during each such period.)

(b) With what persons does he live at the present time, if that be known to you?

15. Set forth in detail what you have *personally observed* as to the moral qualities and conduct of the members of applicant's family or other persons with whom he has lived:

(a) in parental home;

(b) in marital home, if any;

(c) in any other home or place of abode applicant may have had.

16. What do you say of applicant's conduct towards the members of his family or household during each period of your association with him in his home, and at present, if association still continues? (Give full details).

17. State fully any other facts within your knowledge, *or of which you have information,* which in your opinion have any bearing on the applicant's moral character or fitness to practise law, or which would be helpful to the Committee in determining the applicant's character and fitness. [Emphasis Added].

After these actions were filed, these affidavit forms and the instructions were changed. The First Department's form was greatly shortened and has omitted the instructions

regarding affidavits covering home life but asks the affiant to state:

> "6. Length and nature of affiant's acquaintance with applicant:
>
> (a) Residence of applicant;
>
> (b) Persons with whom applicant lives (if known to affiant).
>
> 7. Affiant's conclusions as to applicant's moral character:
>
> 8. Facts upon which affiant's knowledge or opinion as to applicant's moral character is based.

Again, the term "moral character" is not defined and the statutory language is not incorporated.

The Second Department has changed the title of its form to read: "Form for Affidavit of Character and Residence." It has omitted some of the above questions but still requests the following information:

> "5. Describe briefly your associations with the applicant, setting forth how such associations began, and indicate in what activities (business, scholastic, cultural, recreational, athletic, social or otherwise) you have participated with applicant. It is not a sufficient answer merely to repeat the above words in parentheses, but the particular activities should be specified.
>
> 7. What is your conclusion as to applicant's moral character? (Reserve details for next question).
>
> 8. State in detail the facts upon which your knowledge or opinion as to applicant's character is based.

9. Have you visited applicant's

(a) parental home;

(b) marital home, if any;

(c) any other home or place of abode applicant may have had?

10. How often have you visited the parental, marital or other home or place of abode of applicant?

("Frequently" or "often" or other indefinite statement is not a satisfactory answer. Note that in most cases visits will be less frequent than the contacts mentioned in Q. 6, above.)

Missing from this form, again, is any definition of the terms "moral character" and the statutory language is not referred to therein.

In addition to the character affidavits, each judicial department, as authorized, has appointed a committee for the purpose of making an investigation.[7] Each committee is known as the Committee on Character and Fitness of the particular department. To enable the committee to make its investigation, another statute authorizes the committee, subject to the approval of the justices of the appellate division, "to prescribe and from time to time amend a form of statement or questionnaire on which the applicant shall set forth all the information and data required by the Committee and the appellate division justices."[8] Two other statutes must be noted at this juncture. One provides that, "[u]nless otherwise ordered by the appellate division, no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is

[7] New York Civil Practice Law and Rules, Rule 9401.

[8] *Id.* Rule 9404.

entitled to admission."[9] The other statute is the second statute referred to initially which provides that, "[n]o person shall receive said certificate from any committee and no person shall be admitted to practice as an attorney • • •, unless he shall furnish satisfactory proof to the effect • • • that he believes in the form of the government of the United States and is loyal to such government."[10]

In accordance with the foregoing statutory mandates, defendants have prepared application forms. These forms, known as the "Questionnaire and Statement", presently contain 32 questions, all of which must be answered unless otherwise indicated. In addition, "every question and every part of each question must be answered, even though the answer be negative." The application form admonishes the applicant: "This is a statement made under oath." The applicant is further warned that, "failure fully and accurately to disclose any fact or information called for by any question may result in the denial of the application for admission, or if applicant shall have been admitted before the discovery thereof, in the revocation of his license to practice law."

There are two application forms involved in these actions; one form is that used by the Committee on Character and Fitness of the First Department and the other by the Second Department's Committee. When the complaints in these actions were filed, these forms, unknown to plaintiffs, had just been amended in May 1968. Some of the questions objected to in the original complaints had been either deleted or changed. In June 1968, just prior to the filing of these suits, the First Department had already begun to distribute its amended form. After these actions were filed, the Second Department began to distribute its

[9] *Id.*

[10] *Id.* Rule 9406.

amended form to applicants. After the filing of these complaints, still other questions originally objected to were deleted from the amended forms.[11] The net effect of these changes and deletions, however, is to leave unchanged the First and Fourteenth Amendment challenge to the statutes. "The substance of the statutory and regulatory complex remains and from the outset • • • [plaintiffs'] basic claim has been that they are aggrieved by its application." Keyishian v. Board of Regents of Unversity of State of New York, 385 U.S. 589, 596, 87 S.Ct. 675, 680, 17 L.Ed.2d 629 (1967). See also, Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965).

In the original forms, questions 19, 20 and 21 of the First Department's form and questions 32 and 36 of the other were specifically objected to on First and Fourteenth Amendment grounds. Once again, the full flavor of the constitutional assault cannot be appreciated without a close scrutiny of how the committees interpreted and set about their task of implementing and applying the two basic statutes containing the criteria for admission to the bar. The following questions attest the "danger of tolerating, in the area of First Amendment freedoms, the existence of a • • • [regulatory] statute [i. e. C.P.L.R. 9406] susceptible of sweeping and improper application" NAACP v. Button, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405 (1963); Dombrowski v. Pfister, supra.

First Department

> 19. (A) Are there any favorable or unfavorable incidents in your life, whether at school, college, law school, business or otherwise, not called for by the questions contained in this questionnaire or disclosed in your answers thereto?

[11] The first action was filed July 16, 1968 and the second action the next day.

If so, list them.

20. Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or social services?

If so, state fully.

21. (A) Give the names, addresses, objects of and period of membership in each and every club, association, society or organization of which you are or have been a member.

Second Department

32. Have you written any articles for publication?

If so, give the circumstances, the name of publication, the date of publication and the title and subject matter of the article. (Include information relative to any articles for publication in any school or college paper or magazine.)

36. (A) Are you now, or have you ever been at any time (including the time during which you attended high school, college and law school, and including the time during which you engaged in military service or any community activity) a member of any club, association, society or organization or *political party?* [Emphasis Added].

(B) If answer be yes, give the name, address and objects of each and every such club, association, society or organization or party and state the period of your membership and your position or title therein.

Questions 22 and 23 of the First Department's form and question 35 of the other were also objected to by plaintiffs.

These questions read:

First Department

22. (A) Are you now or have you ever been a member of *or affiliated in any way* with any of the organizations or groups listed as subversive by the Attorney General of the United States? [Emphasis Added].

(B) Have you paid dues to, contributed in any way or signed a petition for any such organization or group?

If your answer is yes to either subdivision of this question, give the following information:

Name and address of organization or group • • •

When you became a member or affiliated with it • • •

Period of your association or connection with it • • •

How and why you became associated or connected with it • • •

How and why you severed your connection with it, if you did • • •

23. Have you ever participated *in any way whatsoever* in the activities of such organizations or groups? [Emphasis added].

If so, to what extent.

Second Department

35. (a) Are you pledged now or have you ever been pledged to aid in effecting changes in our form of government by force or violence or any other unlawful means?

(b) Are you now or have you ever been a member of any party or organization created for such pur-

pose or for the propagandizing or the furtherance thereof?

(c) If answer is yes, state the name of the party or organization.

(d) Are you now, or have you ever been, a member of the Communist Party, or have you ever been enrolled as a member of the Communist Party?

The oaths prescribed by question 24 of the First Department's form and questions 33 and 34 of the other were objected to also. The First Department's question, which was virtually identical with the Second Department's question read:

24. (A) Do you believe in the principles underlying the form of government of the United States? * * * State on a rider, in not less than 100 words, what you believe those principles to be. (Handwritten)

(B) Can you conscientiously and do you affirm that you are, without any mental reservation, loyal to the Government of the United States? * * *

The June 1968 amended forms deleted the following questions, *supra:* 19B, 20, 21(a) (First Department) and 32 and 36 (Second Department). The amended forms revised the remaining First Department questions as follows:

Question 19(A) was revised to read:

"31. Is there any incident in your life not called for by the foregoing questions which has any favorable or detrimental bearing on your character or fitness? If the answer is "Yes" state the facts.

No time limit is specified as to this question.

Question 21(B) was revised to read:

> "29. (b) Have you ever been disciplined, expelled, suspended, or ordered to resign from any club, association, society or organization? If your answer is "Yes", state the facts.
>
> Again, no time limitation is given.

Questions 22(A) and (B) and 23 were revised to read:

> "26. Have you ever organized or helped to organize or become a member of *or participated in any way whatsoever* in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means?
>
> If your answer is in the affirmative, state the facts below. [Emphasis Added].

Questions 24(A) and (B) were revised to read:

> "27. (a) Do you believe in the principles underlying the form of government of the United States of America?
>
> (b) Can you conscientiously, and do you, affirm that you are, without any mental reservation, loyal to *and ready to support the Constitution of the United States?* [Emphasis Added].

The amended forms revised the remaining Second Department questions as follows: Questions 33 and 34 (principles underlying form of government and loyalty) were revised to read as the First Department's question 27, immediately *supra,* and questions 35 (pledged to aid change in form of government) was revised to read as the First

Department's question 26, *supra*, immediately preceding question 27.

After the suits were commenced and after the June 1968 amended forms had been distributed, in a tacit confession of error, defendants advised the court that the following questions had been deleted from both amended forms:

> 28. (a) Have you participated in activities of a public or patriotic nature or in philanthropic, religious, or social services?
>
> If so, state fully.
>
> (b) If you engaged in extracurricular activities (athletic, dramatic, debating, club, committee, administration, etc.) in college indicate approximate amount of time spent and responsibility involved.
>
> 29. (a) Give the names, addresses, objects of and period of membership in each and every club, association, society or organization of which you are or have been a member other than those associated with and recognized by accredited schools and colleges.

In addition to the affidavits of good moral character and complete answers to questions in the Questionnaire and Statement, applicants, as a matter of practice, must appear for a personal interview before a member of the Committee on Character and Fitness. During the course of these interviews, applicants, as authorized by Court of Appeals Rule VIII-2, are questioned further about their "good moral character and general fitness", based upon the affidavits and answers on the Questionnaire and Statement. Plaintiffs alleged that these interviews often involve inquiry into the applicant's political activities, speeches, beliefs and conduct of a personal and private nature. Only a general denial of these allegations has been made in the

answers filed by defendants and no other denial of the validity of these allegations has been presented.

It also is essential to a full understanding of the constitutional claims made here to know who it is who challenges these statutes and why such challenge is made. In this connection we must know who the plaintiffs are and why they are here.

Plaintiffs in the first case are the Law Students Civil Rights Research Council, Inc. and three law students. The organizational plaintiff is a non-profit membership corporation organized under the laws of the District of Columbia with principal offices in New York City. Its principal objectives are: 1) "non-partisan research, study and analysis of the law with a view to eliminate prejudice and discrimination; to defend human and civil rights secured by law; and to make public the conclusions reached through such research"; and 2) to "provide a civil rights program where students may study with and assist members of the legal profession in the civil rights field on behalf of indigent, poor and distressed, or underprivileged litigants on civil rights cases."[12] The membership of the Council consists of law students, approximately 1500, in 60 law schools throughout the country. There are chapters of the organization in the City of New York at the law schools of Brooklyn College, Columbia, Fordham, and New York Universities. Membership in these chapters includes persons who are residents of either the First or Second Judicial Department and who have either applied for or intend to apply for membership in the New York Bar in those departments. The Council sues on behalf of these members. The complaint alleges that the work of the organization can succeed only if law students may freely engage in the organization's activities, uninhibited by the fear of subsequent delay in or denial of admission to practice because of prior

[12] Second Amended Complaint, paragraph 3.

involvement with the organization or its activities. The individual plaintiffs are all law students who plan to apply for admission to the New York State Bar upon graduation from law school.

Plaintiffs in the companion case are three individuals who have taken and passed the written examination required of all applicants for admision to the New York bar and two organizational plaintiffs. Two of the individual plaintiffs reside in the First Judicial Department and one resides in the Second Judicial Department. Two of these individuals have never been arrested and have never been suspended or dismissed from any school or university. One has never been suspended or dismissed from any school or university, but he has been arrested for distributing handbills in Albany, Georgia in the summer of 1963. Two of the plaintiffs are graduates of New York University Law School and one is a graduate of the Columbia University School of Law. One is presently an assistant professor of law at Columbia. Another plaintiff is a member of the staff of the Columbia University Center on Social Welfare Policy and Law. One has a master's degree in law.

The Columbia Law Students Guild, one of the organizational plaintiffs, includes law students attending Columbia University School of Law who have not yet graduated from law school and who have not yet taken steps to gain admission to the bar other than their pursuit of the required law studies. These students intend to apply for admission to the bar upon completing law school. The organization also includes students who have completed law school and who have applied for admission to the bar. The other organizational plaintiff includes in its membership law students from the various law schools in New York City. It is a chapter of the National Lawyers Guild. Both organizational plaintiffs are non-profit organizations devoted in the main to the promotion of law reform, facilitation of the

administration of justice, and the protection and fostering of civil rights and liberties.

But, more specifically, as related to the issues raised in this case, the Law Students Guild actively seeks to involve its members in the work of civil rights, civil liberties, and poverty organizations. The National Lawyers Guild, with which both organizational plaintiffs are affiliated, adopted a resolution at its national convention in July 1968 "which places particular emphasis on the concern of lawyers with the war in Vietnam, the draft, racism, and the crises of the poverty and the urban ghettos." [13] It is alleged in the complaint that the New York Chapter "seeks solution to these problems through a radical change in the structure of the nation's legal, political and economic system." [14] It is further alleged that in connection with these objectives, the members of the New York Chapter "have engaged and will engage in many activities not traditionally undertaken by other bar associations." [15] As in the first action, the complaint alleges that these organizations can succeed in their program objectives only if law students feel free to engage in such activities uninhibited by the fear of subsequent delay or denial of admission to practice because of affiliation with these organizations. Both of these organizations likewise sue on behalf of their members who have applied or who will be applying for admission to the bar.

All three organizational plaintiffs have the same standing to sue on behalf of their members as that found in the case on which they rely. N.A.A.C.P. v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). A close look at plaintiffs makes clear that they are not concerned here with whether a law student who has stolen money from his employer or who has murdered his mother may, nevertheless, be admitted to the bar. They are plainly concerned

[13] Amended Complaint paragraph 7b.

[14] *Id.*

[15] *Id.*

with whether political tests may be employed in determining eligibility.

Plaintiffs have moved for summary judgment. Defendants have answered and have moved to dismiss. There is no genuine issue as to any material fact alleged in the complaint, including the questions used by the respective character committees prior to and at the time the suits were filed and the questionnaires as amended and revised since the institution of these actions. Plaintiffs are entitled to judgment as a matter of law and, consequently, to the injunction they seek. Clemons v. Board of Education of Hillsboro, 228 F.2d 853 (6th Cir. 1956), cert. den. 350 U.S. 1006, 76 S.Ct. 651, 100 L.Ed. 868; Henry v. Greenville Airport Commission, 284 F.2d 631 (4th Cir. 1960); United States v. Beaty, 288 F.2d 653 (6th Cir. 1961); Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966).

II. *The First Statute*

On the merits of the questions which the court finds dispositive of this case, plaintiffs must prevail.[16] If plaintiffs

[16] Plaintiffs also claim that: 1) the personal interview and character affidavits regarding home life which are required violate rights secured by the Fourth, Fifth, Ninth and Fourteenth Amendments; 2) the oaths required and disclosures compelled violate the Fifth and Fourteenth Amendments; 3) the statutes, rules and regulations and practices violate the Sixth and Fourteenth Amendments' guarantee of the right to the effective assistance of counsel and the independence of the bar; 4) the admission procedures do not comply with due process of law guaranteed by the Fourteenth Amendment in that they permit denial or delay of admission to the bar without providing for notice of charges, a full hearing at which counsel may be present, an opportunity for confrontation and cross examination, and specification of findings. The latter claim was made, in the main, in Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963). Plaintiffs claim that defendants have not taken any action to comply with the *Willner* decision. That case held defendants' procedures lacking in due process since they failed to provide applicant with a hearing on the reasons for denial of his admission. Although defendants did not reply to this serious charge, it seems that a determination of this issue should await a case in which the procedural due process issue is clearly raised by the facts.

had brought these cases a decade or more ago, i.e., prior to the first Konigsberg v. State Bar of California, 353 U.S. 252, 77 S.Ct. 722, 1 L.Ed.2d 810 (1957), it is doubtful they could have found sufficient precedent with which to convince a court of the validity of their claims.[17] Today, however, a decade after Schware v. Board of Bar Examiners of State of New Mexico, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed2d 796 (1957) and the first *Konigsberg* case, in which the identical issues lurked, plaintiffs' briefs sparkle with the jewel-like precedents of the intervening years in clearly analogous contexts. Waving their First Amendment freedoms on high—especially freedom to believe what one will, freedom of association, and the right to privacy in one's home—plaintiffs carry the banner for lawyers to have the same protection against state infringement upon these areas as has been won for public employees (especially teachers), Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960); Cramp v. Board of Public Instruction, 368 U.S. 278, 82 S.Ct. 275, 7 L.Ed.2d 285 (1961); Baggett v. Bullitt, 377 U.S. 360, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964); Elfbrandt v. Russell, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321 (1966); Keyishian v. Board of Regents, supra, Whitehill v. Elkins, 389 U.S. 54, 88 S.Ct. 184, 19 L.Ed.2d 228 (1967); other licensed professions such as merchant seaman, Schneider v. Smith, 390 U.S. 17, 88 S.Ct. 682, 19 L.Ed.2d 799 (1968); Negroes, NAACP v. Button, *supra,* Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 83 S.Ct. 889, 9 L.Ed.2d 929 (1963); Bates v. Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); NAACP v. Alabama, *supra;* other civil rights advocates, Dombrowski v. Pfister, *supra;* Communists, Aptheker v. Secretary of State, 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed.2d. 992 (1964); veterans, Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2

[17] Note, Inquiries Into The Political Beliefs and Activities of Applicants For Admission To The Bar, 1 Colum. Survey of Hum. Rts. L. 33, 45 (1967-1968).

L.Ed.2d. 1460 (1958); and the population in general, Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).

The first statute, attacked by plaintiffs on the grounds of vagueness and broadness, provides that an applicant who has passed the written examination should be admitted to the bar if the appellate division to which he has applied "shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counselor at law."

In the second *Konigsberg* case, 366 U.S. 36, 81 S.Ct. 997, 6 L.Ed.2d 105 (1961) the good moral character standard was again involved as it had been in the *Schware* case and the first *Konigsberg* case, *supra*. In none of these cases, however, was the "good moral character" standard, *per se*, drawn into question as it is here on the grounds of vagueness and broadness. And since that time, the concepts of vagueness and broadness have not yet been applied by the Supreme Court to this standard or any other bar admission standard as they have been applied recently to statutes and oaths required of persons seeking public licenses or employment or assuming public office. Schneider v. Smith, *supra*; Cramp v. Board of Public Instruction, *supra*; Baggett v. Bullitt, *supra*; Elfbrandt v. Russell, *supra*; Keyishian v. Board of Regents, *supra*; Whitehill v. Elkins, *supra*.

In the second *Konigsberg* case, *supra*, 366 U.S. at 40, 81 S.Ct. at 1001, Mr. Justice Harlan, writing for the majority, pointed out that the validity of the requirement that an applicant for admission to the bar bear the burden of proof of "good moral character" had not been drawn into question there. He also noted that the requirement could not "well be drawn in question", citing the fact that such a requirement exists in all the states. But there was drawn in question the right of the state to put upon an applicant the burden of proving that he had not advocated

the overthrow of government by force and violence. In this connection, Mr. Justice Harlan pointed out that Konigsberg did not challenge the constitutionality of the California statute which forbade certification for admission to the bar of those who so advocated. The majority held, however, that the burden of proof on this issue had not been put upon applicants but upon the state and that in this connection an applicant could not obstruct a committee's inquiry into lawful standards of admission by refusing to answer questions. Konigsberg had refused to answer the question whether he had been a member of the Communist Party on the ground that the First Amendment protected him in his refusal to answer, although he swore that he had never advocated the overthrow of government by force. The majority disagreed with Konigsberg's First Amendment claim. Using a balancing test, the majority held that "the State's interest in having lawyers who are devoted to the law in its broadest sense, including not only its substantive provisions, but also its procedures for orderly change, was clearly sufficient to outweigh the minimal effect upon free association" occasioned by the compulsory disclosure of political party membership in that case.

We, therefore, review here for the first time the moral character standard and the other bar admission standards involved here in the light of the vagueness and broadness concepts which the high Court has applied to other First Amendment cases since the second *Konigsberg* case, without reference to the obstruction rule or the balancing test used there.

The term "good moral character" has not been defined by the New York courts and counsel for defendants have not offered any definition. The term "general fitness" has been defined in only one case as follows: "* * * the words 'general fitness' have rather to do with a man's general experience in life, his family life, his associates,

his business or other experience, his general reputation and the like." Application of Brennan, 230 App. Div. 218, 227, 243 N.Y.S. 705, 715 (2nd Dept. 1930). And in one case it does appear that an applicant was disqualified on political grounds, *inter alia,* pursuant to the "general fitness" criterion, Application of Cassidy, 268 App.Div. 282, 51 N.Y.S. 2d 202 (2nd Dept. 1944). In that case, the applicant was an anti-communist who urged the creation of private armies to combat communism.

Even the Supreme Court in the first *Konigsberg* case, *supra,* and in *Schware, supra,* did not agree upon the meaning of the words "good moral character". There the Court acknowledged that this "unusually ambiguous" standard, "can be defined in an almost unlimited number of ways" and can be "a dangerous instrument for arbitrary and discriminatory denial of the right to practice law." 353 U.S. at 263, 77 S.Ct. at 728. In the first *Konigsberg* case, the Court assumed, without deciding, for the purposes of that case that the proper definition was the one proposed by the state's counsel, i. e., "honesty, fairness and respect for the rights of others and for the laws of the state and nation," 353 U.S. at 264, 77 S.Ct. at 728. The Court took pains to point out that "neither the definition [of good moral character] proposed by counsel nor those appearing in the California cases equates unorthodox political beliefs or membership in lawful political parties with bad moral character." 353 U.S. at 263-264, 77 S.Ct. at 728. The Court also pointed out that the California cases appeared to define " 'good moral character' in terms of an absence of proven conduct or acts which have been historically considered as manifestations of 'moral turpitude' " 353 U.S. at 263, 77 S.Ct. at 728. Mr. Justice Frankfurter, however, in his concurring opinion in *Schware, supra,* offered this definition: "From a profession charged with such responsibilities there must be

exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have throughout the centuries, been compendiously described as 'moral character.' " 353 U.S. at 247, 77 S.Ct. at 761. These definitions are, obviously, still subject to attack on vagueness grounds, but they at least define some of those qualities which might be demanded of lawyers.[18] Professor Walter Gellhorn of Columbia Law School has suggested that the standard for assessing the character of bar applicants be "dishonorable conduct relevant to the occupation" rather than good "moral" character.[19] The few New York cases in which applicants have been rejected on character grounds lend support to Mr. Justice Frankfurter's as well as Professor Gellhorn's view.[20]

In any event, it seems clear that a statutory framework which requires as a standard for admission to the bar that applicants possess the "character and general fitness requisite for an attorney", although vague, is not so vague, in the light of the foregoing definitions and its long and

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[18] *Id.* at page 40.

[19] W. Gellhorn, Individual Freedom and Governmental Restraint 150 (1956).

[20] In the cases decided by the New York courts in which applicants have been barred, it is clear that in each the conduct made the basis for refusal to admit has been dishonorable conduct relevant to the legal profession: e.g. Re Peters, 221 App.Div. 607, 225 N.Y.S. 144, aff'd 250 N.Y. 595, 166 N.E. 337, rearg. denied, 252 N.Y. 572, 170 N.E. 148 (1927) (admission denied because of disbarment in another state); Re Greenblatt, 253 App.Div. 391, 2 N.Y.S.2d 569 (1938) (admission denied because of misrepresentations to character committee about applicant's dismissal from college for misconduct); Application of Cassidy, 268 App.Div. 282, 51 N.Y.S.2d 202, aff'd on rehearing, 270 App.Div. 1046, 63 N.Y.S.2d 840, aff'd, 296 N.Y. 926, 73 N.E.2d 41 (1944) (admission denied because applicant urged creation of armed units for forceful overthrow of government and made inconsistent statements indicating lack of veracity).

proper application in many cases, as to be unconstitutional on its face on the ground of vagueness.

We must, therefore, examine the manner in which the good moral character statute has been construed, implemented and applied by the defendant courts and their respective character committees. With the statute and the Court of Appeals Rule VIII as a guide, defendants have adopted vague and overly broad regulations and procedures which have resulted in a broad and sweeping inquiry into the background of bar applicants. These applicants have been required to answer questions which are vague and broad in violation of constitutional rights. cf. Schneider v. Smith, *supra*. As writers have pointed out, the terms vagueness and broadness actually involve three related problems. Note, The Void for Vagueness Doctrine in the Supreme Court, 109 U.Pa.L.Rev. 67 (1960). A question may leave an applicant guessing as to its meanings. This is referred to as conventional vagueness.[21] Examples of this are revised Question 31, *supra*, which reads: "Is there any incident in your life not called for by the foregoing questions which has any favorable or detrimental bearing on your character or fitness?"; and revised Question 27(a), *supra*, which reads: "Do you believe in the principles underlying the form of government of the United States of America?" cf. Baggett v. Bullitt, *supra*.

Secondly, a question may ask the applicant for too much information, such as those cited, supra, as having been deleted by defendants, asking for a listing of membership in all organizations and a detailing of activities in each over an indefinite period of years, leaving the person questioned guessing as to the relevance of what is asked. This is one type of broadness.[22] Shelton v. Tucker, *supra*. Another example of this is Question 9 of the Second Depart-

[21] Note, 1 Colum. Survey of Hum. Rts. L., at [pp. 54-55, *supra*] footnote 16.

[22] *Id.*

ment's present affidavit form: "Have you visited applicant's (a) parental home, (b) marital home, (c) any other home or place of abode applicant may have had?"

Finally, a question may define carefully the information it seeks, such as membership in the Communist Party, but cover both constitutionally protected and unprotected activity; this other type of broadness is sometimes called overbreadth.[23] Such overbreadth applies to present Question 26, *supra*, relating to membership in organizations which advocate overthrow of government by force. Recent Supreme Court decisions make it abundantly clear that neither Communist Party membership or any other membership can be used to deny admission to the bar without a showing that the applicant knows of the organization's unlawful objectives and has joined with or has acquired " 'specific intent' to further the illegal aims of the organization." Elfbrandt v. Russell, *supra*; Keyishian v. Board of Regents, *supra*; cf. Aptheker v. Secretary of State, *supra*; Haskett v. Washington, 294 F.Supp. 912 (D.D.C., Dec. 4, 1968).

Consequently, the regulations adopted by defendants, i.e., the affidavit forms and the questionnaire, fail to meet the standard of precision applicable to state regulations touching upon First Amendment freedoms. The standard was enunciated by the Supreme Court in NAACP v. Button, *supra*, where the Court ruled that "standards of permissible statutory vagueness are strict in the area of free expression," 371 U.S. at 432, 83 S.Ct. at 337, and that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." 371 U.S. at 438, 83 S.Ct. at 340. More recently, the Court reiterated that ruling in *Keyishian*, by quoting this passage from the *Button* case: "Because First Amendment Freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."

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[23] *Id.*

371 U.S. at 433, 83 S.Ct. at 338. The Court then quoted from another decision in this area which is also singularly applicable here: "When one must guess what conduct or utterances will lose him his position, one necessarily will 'steer far wider of the unlawful zone • • •.' Speiser v. Randall, 357 U.S. 513, 526 [78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460]." 385 U.S. at 604, 87 S.Ct. at 684. For "[t]he threat of sanctions may deter • • • almost as potently as the actual application of sanctions." NAACP v. Button, 371 U.S. at 433, 83 S.Ct. at 338. See also, United States v. Robel, 389 U.S. 258, 88 S.Ct. 419, 19 L.Ed.2d 508 (1967); Dombrowski v. Pfister, *supra;* cf. Aptheker v. Secretary of State, *supra.* Mr. Justice Black's incisive observation in his dissenting opinion in the second *Konigsberg* case is apposite here: "If every person who wants to be a lawyer is to be required to account for his associations as a prerequisite to admission in to the practice of law, the only safe course for those desiring admission would seem to be scrupulously to avoid association with any organization that advocates anything at all somebody might possibly be against, including groups whose activities are constitutionally protected under even the most restricted notion of the First Amendment." 366 U.S. at 73-74, 81 S.Ct. at 1019.

It is clear from all the questions cited, *supra,* that in applying the statutes attacked here, there has been an improper focus upon the applicant's political beliefs and associations and the improper use of a political test in determining admissions to the bar. Such an unlimited political focus and the use of a political test pursuant to a "good moral character" standard is foreclosed by the Supreme Court's decisions. In *Schware, supra,* the Court said: "Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church." 353 U.S. at 239, 77 S.Ct. at 756. As the Court there made clear, the focus must be on

the applicant's illegal political activity, if any, and the disqualification must be on this ground, not his political beliefs or associations.

There also has been an improper invasion of the right of privacy. The hallmark of civilization is that when a man closes the door to his home and retreats to the privacy thereof the eyes and ears of the state remain outside. Griswold v. Connecticut, *supra*. The state simply cannot ask every affiant who supports an applicant for admission to the bar with whom the applicant lives or what the inside of his parents' home is like. There must be some specific information relating to those qualities expected of one about to enter the legal professions before these questions can be asked of a particular applicant. Gibson v. Florida Legislative Investigation Committee, *supra*. Of course the state can, as it long has, require of applicants for admission to the bar that they have the "character and general fitness requisite for an attorney and counsellor at law." But these statutory words must be given such definition and application by defendants as will suggest to applicants and affiants "dishonorable conduct relevant to" the legal profession, not invasions of personal privacy and political beliefs and associations protected by the Constitution. As the Court said in Shelton v. Tucker, *supra*, "• • • even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." 364 U.S. at 488, 81 S.Ct. at 252. And in *Keyishian*, the Court said: "The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform [lawyers] what is being proscribed." 385 U.S. at 604, 87 S.Ct. at 684.

This judge, therefore, holds that the "character and general fitness" statute is constitutional, but its inter-

pretation, implementation and application by the defendant courts and their respective character committees are unconstitutional.

III. *The Second Statute*

The second statute attacked here provides that an applicant for admission to the bar must furnish satisfactory proof to the effect that "he believes in the form of government of the United States and is loyal to such government." N.Y.C.P.L.R. Rule 9406. This is clearly a political test for determining admission to the bar in violation of rights secured by the First and Fourteenth Amendment to the federal constitution. cf. Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961). "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642, 63 S.Ct. 1178, 1187, 87 L.Ed. 1628 (1943). The "First Amendment gives freedom of mind the same security as freedom of conscience." Thomas v. Collins, 323 U.S. 516, 531, 65 S.Ct. 315, 323, 89 L.Ed. 430 (1944). It is simply too late in our constitutional history to try to reconcile the requirements of Rule 9406 with the constitutional axiom "that one be permitted to believe what he will." American Communications Ass'n v. Douds, 339 U.S. 382, 412, 70 S.Ct. 674, 691, 94 L.Ed. 925 (1950). All that Rule 9406 does is "[t]o force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals • • • [and] to humiliate and degrade" the Bar. In re Anastaplo, 366 U.S. 82, 115-116, 81 S.Ct. 978, 996, 6 L.Ed. 2d 135 (1961) (Mr. Justice Black dissenting). It is nothing short of a complete irony that lawyers who fought for and won constitutional protections for other professions are the last to receive protection for themselves.

Rule 9406 is also unconstitutional on its face for another obvious reason. In an area patently involving First Amendment rights where the consequences of failure of proof are severe and the matter to be proved is difficult of definition, the burden of proof is explicitly upon the applicant to prove that he is loyal to the government. Speiser v. Randall, *supra*.

The statute, itself, Rule 9406, says: "No person shall receive said certificate [of character and fitness] from any committee and no person shall be admitted to practice as an attorney and counselor at law in the courts of this state, unless he shall furnish satisfactory proof to the effect: 1) that he believes in the form of government of the United States and is loyal to such government." There is simply no room for the conclusion, which the majority reached in the second *Konigsberg* case, *supra*, that the state has *not* put the burden of proof on the applicant; there it is in plain language not subject to attack on grounds of vagueness. It is clearly not a burden of simply coming forward with some evidence or going forward once the state has made out a prima facie case. Where is that in the statute or evidence before us?

Present Question 26 (relating to membership in organizations advocating overthrow of the government by force) and the present oaths required in the Questionnaire and Statement (relating to the substance of C.P.L.R. 9406) is the method by which this burden is initially put upon the applicant. The answers given to Question 26 and the oaths, which are in the form of yes and no questions, may lead to further questioning upon the personal interview. This has never been seriously denied by defendants and is clearly authorized by the requirement that an investigation be made. N.Y.C.P.L.R., Rule 9401. Consequently, in this case, as in Speiser v. Randall, *supra*, more is involved than the taking of a conclusive oath of

non-criminal political conduct such as was involved in the oath cases referred to by the majority here as justification for requiring the second question oath of lawyers. In those cases, the Supreme Court sustained the validity of loyalty oaths required of public employees, Garner v. Board of Public Works, 341 U.S. 716, 71 S.Ct. 909, 95 L.Ed. 1317 (1951); candidates for public office, Gerende v. Board of Supervisors, 341 U.S. 56, 71 S.Ct. 565, 95 L.Ed. 745 (1951); and officers of labor unions, American Communication Ass'n v. Douds, *supra*. But, as the majority points out in *Speiser*, "If the person took the oath he retained his position. The oath was not part of a device to shift to the office holder the burden of proving his right to retain his position." *Id.* 357 U.S. at 528, 78 S.Ct. at 1343. Here as in *Speiser*, the answers to questions 26 and the oath questions are "only a step in a process throughout which the [applicant] must bear the burden of proof." *Id.* The applicant may be questioned indefinitely and may be required to produce additional affidavits. In this process, an applicant must obviously defend his negative answer, expose and defend his writings, his speeches, his membership in various organizations and his political beliefs.

The procedures here do not involve a standard of proof which would require the character committees to go forward to prove disqualification on grounds of illegal political activity once the applicant has made a prima facie case. The committee may delay its interrogation indefinitely or deny admission altogether, as the Questionnaire and Statement warn, for failure to answer fully any question.

Defendants, in their brief, do not even make an attempt to dull the luster of one of plaintiffs' brightest gems, Speiser v. Randall, *supra*; for there is the heart of plaintiffs' case. Questions relating to loyalty to the government

clearly tread upon First Amendment territory. Consequently, as the Court said in *Speiser*, "Where the transcendant value of speech is involved due process certainly requires in the circumstances of this case that the State bear the burden of persuasion" to show that the applicant is guilty of illegal political conduct. "The vice of the present procedure is that, where particular speech falls close to the line separating the lawful and the unlawful, the possibility of mistaken factfinding—inherent in all litigation—will create the danger that the legitimate utterance will be penalized." 357 U.S. at 526, 78 S.Ct. at 1342.

The burden of proving loyalty to the government here, as in *Speiser*, can have but one effect on a prospective lawyer's First Amendment freedoms, and that is a chilling effect if not a freezing one. "The man who knows that he must bring forth proof and persuade another of the lawfulness of his conduct necessarily must steer far wider of the unlawful zone than if the State must bear these burdens." *Id.* at 526, 78 S.Ct. at 1342. See also Elfbrandt v. Russell, *supra*, 384 U.S. at 17-18, 86 S.Ct. 1238, and Abington School District v. Schempp, 374 U.S. 203, 289-290, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963). (Mr. Justice Brennan concurring). Moreover, a person who must spend long years in preparation and invest large sums of money to enter the legal profession is clearly going to be more prone "to steer far wider of the unlawful zone."

Here an applicant for admission to the bar has the burden of proving that he is loyal to the government. If in the opinion of some members of the character committee he should fail in this burden, he is denied the requisite certificate. This means that the applicant is denied the opportunity to enter the profession for which he has spent large sums of money and much time in study. "So far as I am concerned the consequences to the applicant whether considered from a financial standpoint, a

social standpoint, or any other standpoint I can think of, constitute a more serious 'penalty' than that imposed upon Speiser," Konigsberg v. State Bar of California, *supra*, 366 U.S. at 77, 81 S.Ct. at 1021, Mr. Justice Black dissenting.

If, as in *Speiser*, the state cannot constitutionally impose upon a veteran seeking a tax exemption the burden of proving loyalty to our government, by what reasoning can the state constitutionally impose such burden on one seeking a license to practice law? Defendants did not answer this question to the satisfaction of this court and did not cite any case to sustain their position other than the second *Konigsberg* case where the Court explicitly found the burden was not on the applicant.

Finally, Rule 9406 is likewise unconstitutional on its face since it lacks sufficient standards for determining who shall be admitted to the bar. It has that same quality of "extraordinary ambiguity" condemned by the Court in describing the statutory framework in *Keyishian, supra*, 385 U.S. at 604, 87 S.Ct. 675. There vague statutory language was held unconstitutional. One statute required the discharge of a teacher for "the utterance of any treasonable or seditious acts or words or the doing of any treasonable or seditious act", *Id.* at 593, 87 S.Ct. at 678. Another statute barred persons from employment as teachers who "by word of mouth or writing wilfully and deliberately advocates, advises or teaches the doctrine" of forceful overthrow of government. *Id.* at 599, 87 S.Ct. at 682. The language of Rule 9406 is equally vague. The language of Rule 9406 is "wholly lacking in 'terms susceptible of objective measurement.'" *Id.* at 604, 87 S.Ct. at 684. And "men of common intelligence must necessarily guess at its meaning and differ as to its application * * *." Baggett v. Bullitt, *supra*, 377 U.S. at 367, 84 S.Ct. at 1320. The words "loyal to such govern-

ment" are no more definite than the phrase "'respect for * * * the institutions of the United States of America * * * and undivided allegiance to the government * * *'," found lacking in ascertainable standards in *Baggett*. *Id.* at 361, 84 S.Ct. at 1317.

Pursuant to this vague statute, defendants require applicants on the Questionnaire and Statement to answer these questions: "Do you believe in the principles underlying the form of government of the United States of America? Can you conscientiously, and do you, affirm that you are, without any mental reservation, *loyal to and ready to support the Constitution of the United States?*" The italicized words constitute the amended portion of this oath. This amendment was made just prior to the filing of these actions. This second question formerly read: "Can you conscientiously and do you affirm that you are, without any mental reservation, loyal to the Government of the United States?" The first question was also amended to delete the requirement that the applicant write, in not less than 100 words, what he believes those principles underlying our form of government to be. These amendments, however, do not rescue these oaths from the stamp of unconstitutionality.

These questions are oaths for purposes of perjury under New York law. Under the law, oath includes an affirmation N.Y. Penal Law, McKinney's Consol. Laws, c. 40, § 210.00. When an applicant answers the second question in the affirmative he has unquestionably taken an oath. Moreover, applicants are warned that the statement is one made under oath. Consequently, when the applicant answers the first question, *supra,* and then swears or affirms at the end of the Questionnaire and Statement, as required, to the truth of his affirmative answer, the applicant has taken an oath to which the penalties for perjury attach, the same as in Whitehill v. Elkins, *supra,* and Elfbrandt v. Russell, *supra.*

If the oath required in Whitehill v. Elkins, *supra*, ("I m not engaged in one way or another in the attempt to verthrow the government of the United States") is constitutionally unacceptable for teachers because too vague nd broad when read in the light of the membership statute o which it was tied; and if the oath in Baggett v. Bullitt, *upra*, ("I will • • • promote respect for the flag and the nstitutions of the United States • • • and undivided allegiance to the government") cannot constitutionally be equired of teachers because it is also vague and broad; nd if the oath required of teachers in Cramp v. Board of Public Instruction, *supra* ("I have not and will not end my aid, support, advice, counsel or influence to the Communist Party") is likewise vague and broad; pursuant o what rationale shall lawyers be required to take the vague and broad oaths here? It has been suggested that here is none and that there is more reason for applying generous First Amendment standards in bar admission cases than in public employment cases.[24] The most important reason is that teachers, for example, are employees of the state while lawyers are employed by their clients to whom they owe their first obligation. This difference would seem to justify greater regulation of teachers than lawyers. Lawyers are officers of the court only in the sense that they are subject to the discipline of the court and are under an obligation not to hinder the administration of justice. Teachers and other public employees are employed directly by the state which thus has the added interest of an employer. The majority here holds that lawyers are in a special category and may, therefore, be required to take an oath such as those upheld as to "a limited class of persons in or aspiring to public positions by virtue of which they could, if evilly motivated, create serious danger to the public safety." *Garner, supra*;

[24] *Id.* at 52.

Gerende, supra; American Communications Ass'n, *supra.* But the majority pointed out in Speiser v. Randall, *supra,* that in those cases there was no attempt directly to control speech, as in the instant case, but rather to protect, from some evil shown to be grave, some interest clearly within the sphere of governmental concern. What danger to the public is actually created by a "subversive" lawyer? Again, this question has been thoroughly examined.[25] The conclusion is that the danger is small and that, in any event, adequate remedies in the form of criminal penalties and disbarment already exist to punish and deter irresponsible conduct.

Finally, it seems clear that a determination as to the vagueness and broadness of these oath questions must be undertaken as a necessary requisite to any consideration of the obstruction by an applicant of the investigative process by refusing to answer these oath questions. cf. Whitehill v. Elkins, *supra.* Rule 9406's language, "loyal to such government" and the first question's language, "principles underlying the form of government" are certainly broad enough to encompass constitutionally protected dissent and protest activity against certain governmental policies and principles. There has been no attempt by statute, rule, regulation, or court decision to enlighten anyone as to what utterances or what activities may be construed as disloyalty to our government or contrary to the principles underlying our form of government. Clearly, law students who dissent from this government's policies with respect to the war in Vietnam have a ground for concern as to whether they are loyal to the government. "It is no answer to say that the statute would not be applied in such a case. We cannot gainsay the potential effect of this obscure wording on 'those with a conscience and scrupulous regard for such undertakings.'" *Keyishian, supra,* 385 U.S. at 599, 87 S.Ct. at 681.

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[25] *Id.* at 40.

As to the oaths embodied in the two questions, defendants argue that examination of the New York statutory scheme discloses that both the Legislature and the Court of Appeals treat members of the bar as officers of the courts who, as such, are required to take the constitutional oath of office. Accordingly, say defendants, the requirements of C.P.L.R. 9406, that a person shall not be admitted to the bar unless he furnishes "satisfactory proof to the effect that he believes in the form of government of the United States and is loyal to such government" must be construed in harmony with its purpose, i.e., to test merely that the applicant, if approved, can truly and honestly take the constitutional oath of office. Thus, defendants plead, C.P.L.R. 9406 may not be deemed to be either vague or unconstitutional; it merely requires, in substance, that a law officer-to-be affirm that he believes in and is loyal to our constitutional form of government the same as any judge or other state officer.

In reply, plaintiffs' points are exceedingly apt. First, there is no attack made here upon the requirement that every person upon being admitted to the bar take the promissory oath given to all state officers to support the state and federal constitutions which is required by the New York Constitution, Article XIII, § 1. New York Judiciary Law § 466.[26]

Secondly, plaintiffs say that the attempt to save these vague oaths as to belief by assimilation with the constitutional oath of office cannot succeed. The fact is that the authority to prescribe these oaths derives from C.P.L.R. 9406 which is a statutory prerequiste for admission to the

[26] "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ....., according to the best of my ability." N.Y.Const., Art. XIII, § 1.

bar and, consequently, must be considered with reference thereto and not with reference to the Constitutional oath already required of lawyers and to which plaintiffs do not object. Even if we accept defendants' contention that C.P.L.R. 9406 and these oaths must be construed in light of the constitutional oath, as the Court said in Whitehill v. Elkins, *supra*, 389 U.S. at 61-62, 88 S.Ct. at 187 the statute and these oaths are still "befogged". We find here, as the Court found there, "an overbreadth [discussed supra] that makes possible oppressive or capricious application" as character committee personnel and appellate division justices change. That very threat may deter the unfettered exercise of First Amendment freedoms by law students as much as successive suits for perjury. This statute and these oaths are just another classic example of the often cited need for legislation drawn with precision in this sensitive and important First Amendment area. cf. Whitehill v. Elkins, *supra*.

The distinction between promissory oath and test oath of the kind here involved was recognized long ago. Ex parte Garland, 71 U.S. (4 Wall.) 333, 18 L.Ed. 366 (1866). The oaths involved here are not promissory oaths to support the Constitution of the State and the United States as in the case of the constitutional oath. The fact that these oaths are in the form of "yes" and "no" questions is of special significance. If the applicant does not give the desired answer, which in this case is "yes", he may be questioned further, delayed in his admission, or disqualified without further questioning. He is warned of this on the front of the Questionnaire and Statement. In short, he must carry the burden of proof that he is qualified for admission. These oaths are not simply a promise to support the Constitution. These are oaths which require an applicant to disclaim past or present constitutionally protected political beliefs or activities. It is for this reason, i.e.,

that these oaths are too vague and too broad, that they cannot be equated with the constitutional oath.

Finally, plaintiffs "strike home" with another gem out of their storehouse of recent precedent, Bond v. Floyd, 385 U.S. 116, 87 S.Ct. 339, 17 L.Ed.2d 235 (1966). There the state had claimed, as here, the right to examine the officer-to-be to test his sincerity and ability to take the constitutional oath there prescribed. The Court ruled in response to this claim in the *Bond* case, at 132, 87 S.Ct. at 347, that such a power could not be conceded because of its obvious susceptibility to abuse which it went on to demonstrate. Again, the Court made clear that there must be some specific evidence of the prospective officer's inability to take the oath before any such inquiry becomes proper. It simply cannot be done in every case.

Motion for Rehearing

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

Upon the annexed affidavit of Leonard B. Boudin, sworn to the 13th day of March, 1969, let the defendants show cause before this Court on the 21st day of March, 1969, at 4:00 o'clock, in the Court of Appeals Court Room of the United States Courthouse, Foley Square, New York, New York, why an order should not be made in the above-entitled matter: Granting rehearing of the plaintiffs' motions herein; and upon such rehearing, entering an order:

1. Dismissing the complaints insofar as they allege the unconstitutionality on their face of §90(1)(a) of the New York Judiciary Law and Rules 9401, 9404 and 9406(1) of Art. 94 of the Civil Practice Law and Rules;

2. Denying in part plaintiffs' motions and granting defendants' motions for summary judgment insofar as they pertain to the challenged statutes;

3. Denying in part plaintiffs' motions for preliminary injunctions against the enforcement of the above specified statutes and of all the practices and regulations of the defendants complained of;

4. Reducing the time limitations set forth in this court's opinion filed on February 17, 1969; and

5. For such other and further relief as the court may deem just and proper.

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Sufficient cause having been shown, let service of this order upon the attorneys for the defendants on or before 5 o'clock P.M., March 17, 1969, be deemed sufficient.

Dated: New York, N. Y.
March 14, 1969.

/s/ Constance Baker Motley
U.S. Circuit Judge

Affidavit of Leonard B. Boudin in Support of Motion for Rehearing

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LEONARD B. BOUDIN, being duly sworn, deposes and says:

1. I am the attorney for the plaintiffs Stephen Martin Wexler, *et al.*, in 68 Civ. 2938 and make this motion on behalf of the plaintiffs in this action and in the companion action, 68 Civ. 2917.

2. On February 17, 1969, this Court ordered the two cases consolidated and rendered its decision on the merits of the plaintiffs' complaints. It upheld against constitutional attack the validity of §90(1)(a) of the New York Judiciary Law and Rules 9401, 9404 and 9406(1) of Art. 94 of the Civil Practice Law and Rules; District Judge Motley concurring in part and dissenting in part, rendered a separate opinion to the effect that Rule 9406(1) was unconstitutional on its face, and that the other Rules of Art. 94 and §90(1)(a) of the Judiciary Law were unconstitutional as implemented and applied by the defendants.

3. This Court also held that certain practices of the defendants were in violation of the constitutional rights of the plaintiffs and the class of individuals they represented. These practices related specifically to certain interrogatories and oaths used on the questionnaires issued by the defendant Committees on Character and Fitness and approved by the defendant

Appellate Divisions, and the opinions make it clear that oral interrogation along the same lines would be equally improper.

4. On consideration of the appropriate relief, the Court ruled that the plaintiff-applicants could submit to the admission process and fill out the questionnaires in a manner consistent with the guidelines established by the Court's opinion. If the applicants then faced any obstacles they could apply to this Court for further relief.

The Court then ruled that it would:

> "Hold all motions until such date not later than 90 days from the entry of this opinion, when counsel for the defendants shall report in writing what action, if any, the Appellate Divisions have taken. Such report shall be served upon plaintiffs' counsel; within 20 days thereafter it may if so advised, serve and file appropriate papers with respect to what further relief, if any, they deem required; the defendants shall answer within 15 days."

The Court also provided that "[i]f counsel desire an opportunity for further argument, we will assign a date."

The Court has, in effect, denied preliminary injunctive relief for the 90-day period at least, in the interest of comity and in expectation of the defendants' willingness to comply with the Court's rulings. Even as to the law student-plaintiffs, the Court held that preliminary relief would be unnecessary and no "serious chill during this brief interval" will occur because the "ultimate result is so clear."

5. The delay in signing an appealable order in this case deprives the plaintiffs and particularly the plaintiff-applicants of their right to an adequate appeal and ultimately to the earliest possible admission to the New York Bar.

Some of the plaintiff-applicants, for example, are not prepared to fill out the questionnaires and submit to the admission process declining only to answer the questions deemed improper by this Court. Since their principal claim has not been resolved in their favor, namely, that the statutes permit an unwarranted invasion of their political and personal privacy, the plaintiff-applicants do not believe that their First Amendment rights have been or can be fully protected by this Court's decision.

6. We, therefore, respectfully request that this Court sign an order (i) denying in part plaintiffs' motion and granting in part defendants' motion for summary judgment with respect to the challenged statutes and (ii) denying in part plaintiffs' motions for preliminary injunction respecting the challenged statutes and practices involved here.

7. Such an order is not in conflict with the intentions of this Court expressed in its opinion. It will permit the necessary retention of jurisdiction to supervise the revision of the defendants' practices and will protect those plaintiff-applicants who might submit to the admission process.

Such an order will also protect the interests of those plaintiffs who wish to take an early appeal.

8. With respect to the Court's action in deferring an order from the motions herein for at least 90 days, it is submitted that there should be a marked reduction of time periods indicated. This Court's decision modified or eliminated only a few questions on the questionnaires and in doing so it has set specific guidelines as to what the defendants must do in order to align their practices with the requirements of the Constitution. A decision by the defendants as to whether they will

comply with this aspect of the Court's opinion should have been made by this time; as this Court said in view of the defendants' expressed willingness to comply "the ultimate result is . . . clear".

Defendants have already had three weeks in which to act upon this Court's opinion. Under the circumstances, it seems to us that the Court's order should be modified so as to give the defendants 40 days from the decision of this Court and to provide for a response by the plaintiffs within 5 days thereafter, and a further answer by the defendants within 5 days.

There is no reason to withhold the order of this Court until the defendants indicate whether they will voluntarily comply for, as indicated, the relief granted by this Court is insufficient from the point of view of the plaintiffs. They intend to appeal to the Supreme Court even if there should be compliance by the defendants. There is, therefore, substantial reason why an order should be entered by this Court granting the relief sought by the plaintiffs to the extent that this Court has determined that it should be granted and denying the relief to the extent that the Court has so ruled. If this is done, the plaintiffs intend to appeal from so much of the order as denies them the relief sought.

9. No prior application for this order has been made by the plaintiffs.

10. This motion is brought on by order to show cause because the case was argued before a statutory court and the time and place of its meeting to consider this motion will have to be determined by the court.

/s/ Leonard B. Boudin

Affidavit of Leonard B. Boudin in Support of Motion for Rehearing
68 Civ. 2917; 68 Civ. 2938

Sworn to before me this
13th day of March, 1969

/s/ Jeanette Rosenfeld

JEANETTE ROSENFELD
Notary Public, State of New York
No. 31-3355935
Qualified in New York County
Commission Expires March 30, 1969

Defendants Report

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

SIRS:

PLEASE TAKE NOTICE that, pursuant to the opinion of this Court dated February 17, 1969, as modified by order of this Court dated March 21, 1969, the within Report was filed this day with the Clerk of the Court.

Dated: New York, N. Y.
May 14, 1969

Yours, etc.

LOUIS J. LEFKOWITZ
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State of New York

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By /s/ Daniel M. Cohen
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To:

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Defendants Report

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

TO THE HONORABLE HENRY J. FRIENDLY, CIRCUIT JUDGE; DUDLEY B. BONSAL AND CONSTANCE B. MOTLEY, DISTRICT JUDGES:

The decision of this Court filed February 17, 1969, as modified on March 21, 1969, instructed counsel for the defendants to submit a report to this Court by May 15, 1969 setting forth the steps taken by the Appellate Divisions and their respective Committees on Character and Fitness to meet the objections noted in this Court's opinion. This report is submitted pursuant to the Court's direction.

The Appellate Divisions and their Committees have reviewed not only the particular questions found defective, but also have reviewed other matters raised in the pleadings and at argument which might appropriately be considered in the formulation of a judgment. This review was carried out, however, without any communication from plaintiffs' counsel, although we understood that suggestions would be forthcoming from them.

Questions 26, 27(a) and 31.

This Court's opinion found three questions in the Form of Questionnaire troublesome, and these have been revised to meet the objections noted by the Court.

Question 31 (renumbered as Question 30 in the Second Department) concerned incidents in the applicant's life not disclosed by other questions. This question has been deleted from the Questionnaire.

Defendants Report
68 Civ. 2917; 68 Civ. 2938

Question 27(a) formerly asked whether the applicant believed "in the principles underlying the form of government of the United States", which this Court found vague. Defendants have taken the position that Question 27 deals only with the applicant's ability to take the constitutional oath prescribed for officers of the Court; consistent with that interpretation, Question 27(a) has been revised as follows:

> "Do you believe in the constitutional form of government of the United States of America?"

Question 26 dealt with membership or affiliation with organizations advocating the violent overthrow of the Government of the United States. This Court found the question defective in two respects: (1) The question, as phrased, did not make it clear that the advocacy of violent overthrow must have coincided with the applicant's membership, and (2) the question was not limited to "knowing" membership. These defects, we believe, have been cured in the revised question but the Appellate Divisions have not been content to merely meet the objections noted by the majority of this Court. Judge Motley's dissenting opinion noted, at p. 32, that admission to the Bar might well be denied to an applicant only if, in addition to knowing membership, he shared the "specific intent to further the unlawful aims of the organization". Question 26 has therefore been rephrased in two parts to meet the objections both of the majority of this Court and of Judge Motley, as follows:

> "26(a) Have you ever organized or helped to organize or become a member of any organization or group of persons which, during the period of your membership or association, you knew was advocating or teaching that the government of the United States or any state or any political subdivision thereof should be

overthrown or overturned by force, violence or any unlawful means? . . . . . If your answer is in the affirmative, state the facts below.

"(b) If your answer to (a) is in the affirmative, did you, during the period of such membership or association, have the specific intent to further the aims of such organization or group of persons to overthrow or overturn the government of the United States or any state or any political subdivision thereof by force, violence or any unlawful means?"

Other Matters

We understood that plaintiffs wished a review of the form of affidavits presently being utilized to establish the character and residency of applicants, and these forms of affidavits have been reviewed by the Appellate Divisions and their respective Committees. No change is presently planned for these forms of affidavit.

Finally, the plaintiffs belatedly challenged the practice, utilized in the Second Department, requiring an applicant to execute an authorization permitting the Committee on Character and Fitness to have access to the applicant's Selective Service file. Although this Court did not review that practice (see opinion, at fn. 9, p. ii), that practice has been reviewed by the Appellate Division, and has been, or shortly will be, discontinued.

Dated: New York, N.Y.
May 14, 1969

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

Defendants Report
68 Civ. 2917; 68 Civ. 2938

By /s/ Daniel M. Cohen
Assistant Attorney General
Attorney for Defendants

Of Counsel:
David W. Peck
Sullivan & Cromwell
48 Wall Street
New York, N.Y. 10005

Plaintiff's Response

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 69 Civ. 2938]

TO THE HONORABLE HENRY J. FRIENDLY, CIRCUIT JUDGE: DUDLEY B. BONSAL AND CONSTANCE B. MOTLEY, DISTRICT JUDGES:

The plaintiffs in 68 Civ. 2938 respond by their counsel to the report of the defendants dated May 14, 1969, as follows:

1. The defendants' rephrasing of question 26 is, in our opinion, insufficient to meet the objections raised by the plaintiffs and in Judge Motley's opinion. Assuming that any general question of that type were properly addressed to an applicant for admission to the bar, which is not conceded, question 26(a) and (b) would require a further rephrasing to read as follows:

> "Have you ever organized or helped to organize or become a member of any organization or group of persons which during the period of your membership or association you knew was advocating that the Government of the United States or any state or any political subdivision thereof should be overthrown or overturned by force or violence and with respect to which during the said period of membership you had the specific intent to further the aims of such organization or group of persons to overthrow or overturn the Government of the United States or any state or any political subdivision thereof by force or violence."

2. Question 27(a) has been rephrased by the defendants in a manner which we still believe to present two constitutional

objections. The first is that the term "constitutional form of government" is impermissibly vague; the second is that any question addressed to belief is a violation of the First Amendment.

3. The report indicates that no change is presently planned for the affidavits presently being utilized to establish the character and residency of applicants. We find these affidavits objectionable with respect to the following questions: 6(b). "Persons with whom applicant lives (if known to affiant)"; 7. "Affiant's conclusions as to the applicant's moral character"; 8. "Facts upon which affiant's knowledge or opinion as to applicant's moral character is based."

4. The report of the defendants does not indicate that the Character Committees will refrain from making oral inquiries or investigations in the areas held constitutionally protected by this Court's decision. It is our view that the plaintiffs are entitled to protection from such oral interrogations and investigations.

5. We, of course, adhere to the position taken in our briefs and oral argument and to the views expressed in the opinion of Judge Motley, dated February 17, 1969. In any event, we submit that a declaration of the plaintiff's rights and provision for appropriate relief should be embodied in a judgment of this Court.

Dated: New York, N. Y.
May 20, 1969

Respectfully Submitted,

RABINOWITZ, BOUDIN & STANDARD
Attorneys for Plaintiffs
Stephen Wexler, *et al.* in
68 Civ. 2938
30 East 42nd Street
New York, New York 10017

CERTIFICATE OF SERVICE

I, Leonard B. Boudin, hereby certify that on this 20th day of May, 1969, I served by mail a copy of the within response upon each of the following: Hon. Louis J. Lefkowitz, Attorney General of the State of New York, attention of Daniel M. Cohen, Esq., Assistant Attorney General, Attorney for Defendants, at 80 Center Street, New York, New York; David W. Peck, Esq., Sullivan & Cromwell, at 48 Wall Street, New York, N.Y. 10005; and Alan H. Levine, Esq., Attorney for Plaintiffs Law Students, *et al.*, at 156 Fifth Avenue, New York, N.Y. 10010.

/s/Leonard B. Boudin

Defendant's Reply

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

TO THE HONORABLE HENRY J. FRIENDLY, CIRCUIT JUDGE; DUDLEY B. BONSAL AND CONSTANCE B. MOTLEY, DISTRICT JUDGES:

Defendants, by their counsel, submit the following reply to plaintiffs' response dated May 20, 1969.

Plaintiffs have taken issue with the revised form of Question 26 of the Form of Questionnaire, and suggest that the two subdivisions of that question be incorporated in a single sentence. We submit that the form of question adopted by the Appellate Divisions is permissible, whereas the form proposed by plaintiffs is both vague and ungrammatical.

The defendant Courts and Committees see no need for further oral argument, although counsel are willing to present such argument if that is considered desirable by this Court. If the revisions set forth in our report of May 14, 1969 are considered sufficient to remedy the problems noted in this Court's opinion, counsel are prepared to submit a proposed judgment for the consideration of this Court.

Dated: New York, N.Y.
May 29, 1969

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

By /s/ Daniel M. Cohen
Assistant Attorney General
Attorney for Defendants

Of Counsel:
David W. Peck
Sullivan & Cromwell
48 Wall Street
New York, N.Y. 10005

Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

68 Civ. 2917

LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., *et al.*,
Plaintiffs,

against

LOWELL WADMOND, *et al.*,
Defendants.

68 Civ. 2938

STEPHEN MARTIN WEXLER, *et al.*,
Plaintiffs,

against

THE SUPREME COURT OF THE STATE OF NEW YORK, Appellate Division, First Judicial Department, *et al.*,
Defendants.

The plaintiffs in 68 Civ. 2917, Law Students Civil Rights Research Council, Inc., *et al.*, having commenced an action on their own behalf and, pursuant to Rule 23, F.R.C.P., on behalf of all others similarly situated, seeking declaratory and injunctive relief against the enforcement of Statutes and Rules of the State of New York delegating to the defendants Supreme Court of the State of New York, Appellate Division, First Judicial Department and the Com-

mittee on Character and Fitness appointed by it, the authority to examine and certify persons qualifying for admission to the Bar of the State of New York, and plaintiffs having challenged the application of such Statutes and Rules as embodied in the form of Questionnaires and oral interviews conducted by said Court and Committee, and plaintiffs Law Students Civil Rights Research Council, Inc., *et al.*, having moved for convocation of a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 and for a declaratory judgment and a preliminary and permanent injunction on the grounds that the New York Statutes and Rules, on their face and as applied, violated the plaintiffs' rights under the Fourteenth Amendment to the United States Constitution; and

Plaintiffs in 68 Civ. 2938, Stephen Martin Wexler, *et al.*, having commenced an action seeking declaratory and injunctive relief against the defendants Supreme Courts of the State of New York, Appellate Divisions, First and Second Judicial Departments and the Committees on Character and Fitness thereof, contending that the State Statutes and Rules empowering the defendant Courts and their Committees to establish procedures for applications for admission to the New York State Bar were vague and overbroad in violation to the Fourteenth Amendment, and that the New York Statutes and Rules as applied by the defendant Courts and Committees, in the written Questionnaires promulgated by them and in the personal interviews conducted of applicants, were unconstitutional as written and as applied; and said plaintiffs having moved for the convocation of a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 and for a preliminary injunction and declaratory judgment; and

Honorable Constance Baker Motley, District Judge, on September 25, 1968 having granted plaintiffs' separate motions to convene a three-judge court, and this Court

having convened for argument of the respective motions by plaintiffs on November 13, 1968, at which time the above actions were consolidated; and

Defendants having moved to dismiss the complaints on the grounds that this Court lacked jurisdiction over the persons of the defendants, and over the subject matter of these actions, and the defendants having contended that this three-judge court was not properly convened, and the defendants having moved to dismiss the complaints for failure to establish a claim under the United States Constitution or under Federal Law; and

This Court having rendered its opinion on February 17, 1969, holding that it did have jurisdiction to reach the merits of the claims asserted in the complaints, and holding further that the Statutes and Rules challenged in these actions were and are constitutional on their face but that certain questions then being utilized in the Questionnaires were inconsistent with the Fourteenth Amendment to the Constitution of the United States; and the defendants having been directed to file a report within ninety (90) days after the rendering of this Court's decision setting forth the steps taken to implement that decision; and the defendants having filed a report dated May 14, 1969, hereto annexed, setting forth changes which have been adopted in the form of Questionnaire; it is finally ORDERED, ADJUDGED AND DECREED (1) That this Court was properly convened and has jurisdiction over the subject matter of this action and over the persons of the defendants;

(2) That the New York State Statutes and Rules delegating power to the Supreme Courts, Appellate Divisions and their respective Committees on Character and Fitness to administer admissions to the New York Bar do not violate the Fourteenth Amendment to the United States Constitution on their face;

(3) That Question 27(a) as revised in said report dated May 14, 1969, be further revised to read as follows:

> "Is there any reason why you cannot take and subscribe to an oath or affirmation that you will support the constitutions of the United States and of the State of New York? If there is, please explain."

(4) That the motions of plaintiffs and defendants are granted to the extent herein provided and are otherwise denied;

(5) That no party shall recover costs against any other; and

(6) That this decree is without prejudice to any new action relating to the manner in which the aforesaid procedures are carried out.

Dated: New York, New York
June 16, 1969

HENRY J. FRIENDLY
U.S.C.J.

DUDLEY B. BONSAL
U.S. D.J.

While dissenting in certain respects from the court's opinion, I sign the decree as properly carrying it out.

CONSTANCE BAKER MOTLEY
U.S. D.J.

Filed:
June , 1969

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Clerk

Notice of Appeal

UNITED STATES DISTRICT COURT
Southern District of New York

[Same Title, 68 Civ. 2917; 68 Civ. 2938]

Notice is hereby given that LAW STUDENTS CIVIL RIGHTS RESEARCH COUNCIL, INC., TOBY B. GOLICK, JAMES C. MAURO, JR., WILLIAM H. B. RODARMOR, STEPHEN MARTIN WEXLER, H. GABRIEL KAIMOWITZ, ROBERT M. COVER, THE COLUMBIA LAW STUDENTS GUILD and NEW YORK CITY CHAPTER OF NATIONAL LAWYERS GUILD, the above named plaintiffs, hereby appeal to the Supreme Court of the United States from the final judgment entered in this case on June 16, 1969, insofar as said judgment partially denies plaintiffs' motions for declaratory and injunctive relief and partially grants the defendants' motion to dismiss the complaints.

This appeal is taken pursuant to 28 U.S.C. §1253. Dated, August 7, 1969.

JEREMIAH S. GUTMAN
LEVY, GUTMAN and GOLDBERG
363 Seventh Avenue
New York, New York 10001

ALAN H. LEVINE
c/O New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Attorneys for Plaintiffs in 68 Civ. 2917

Notice of Appeal
68 Civ. 2917; 68 Civ. 2938

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To:

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